

PROMIS SOFTWARE: BACKGROUND

20 Docs

A THEORETICAL AND EMPIRICAL ANALYSIS OF THE PROSECUTOR

BRIAN FORST* and KATHLEEN B. BROSI**

IN all the volumes that have been written about crime and the system that has evolved to deal with it, a surprisingly small portion is devoted to the role of the prosecutor. A student of criminology is likely to read considerably more about offenders and their characteristics, or about police and prisons and their respective characteristics, or even about juries and their characteristics, than about the district attorney.

One might infer from this relative lack of scholarly attention to the prosecutor that his role is not as important as that of the other principals in the system. A few, however, have recognized that the opposite may be nearer the truth. An especially bold acknowledgment of the extensive authority of the American prosecutor was offered by a former U.S. Attorney General: "The prosecutor has more control over life, liberty, and reputation than any other person in America."¹ More recently, a prominent criminologist has written "By legal authority and by practice, U.S. prosecutors have the greatest discretion in the formally organized criminal justice network."²

Economists have joined in the analysis of the prosecutor, following the pioneering work of William Landes. This approach consists, typically, of a mathematical theory that is often tested empirically with the use of advanced forms of regression analysis. Landes postulated that the prosecutor's decision

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¹ Robert H. Jackson, *The Federal Prosecutor*, 24 J. Am. Jud. Soc'y 18 (1940).

² Albert J. Reiss, Jr., *Discretionary Justice in the United States*, 2 Int'l J. Criminology & Penol. 181, 195 (1974).

to go to trial or settle a case prior to trial depends on the probability of conviction, the severity of the crime, the availability and productivity of his resources and those of the defendant, the costs of prosecuting the case, and attitudes toward risk. This theory assumes that the prosecutor allocates resources toward the end of maximizing the expected number of convictions weighted by their respective sentences, subject to a resource constraint.³

William Rhodes has attempted to expand Landes' theory by introducing participants in the adjudication process other than the prosecutor and defendant, and by emphasizing institutional features of the plea bargaining process. Judith Lachman has produced another variant in the theory of prosecutor behavior by formulating a "switch function" that specifies the point beyond which the district attorney should opt for a trial rather than a negotiated plea.⁴

One important element of prosecutor operations that has been left out of these analyses involves the prosecutor's concern about recidivists. There is indirect evidence of this concern. In the District of Columbia, for example, a "Major Violators Unit" was established in the prosecutor's office to ensure that misdemeanor cases involving repeat offenders not be handled in the "mass production" fashion that is customarily associated with extraordinarily large misdemeanor case loads.⁵ It has also been reported that the D.A. in the Bronx, New York, gives extra attention to cases involving repeat offenders.⁶ Further evidence is provided by the existence of a body of legislation that sets forth provisions for the prosecutor to initiate additional charges against defendants who have several prior convictions.⁷

The D.A.'s concern about cases involving defendants with more serious criminal histories seems especially justifiable to the extent that prosecutive resources allocated to these cases produce a greater degree of crime reduction than if allocated to other cases. By concentrating more effort on cases involving repeat offenders, in the interest of reducing future crime, the prosecutor with fixed resources gives up some attention to other cases. Allocating re-

³ William M. Landes, *An Economic Analysis of the Courts*, 14 J. Law & Econ. 61 (1971).

⁴ William M. Rhodes, *An Economic Analysis of the Criminal Courts* 17 (unpublished Ph.D. dissertation, U. Minn., 1974); and Judith A. Lachman, *An Economic Model of Plea Bargaining in the Criminal Court System* (unpublished Ph.D. dissertation, Mich. State U., 1975).

⁵ William A. Hamilton & Charles R. Work, *The Prosecutor's Role in the Urban Court System: The Case for Management Consciousness*, 64 J. Crim. L. & Criminology 183, 187 (1973).

⁶ Joan E. Jacoby, *Case Evaluation: Quantifying Prosecutorial Policy*, 58 Judicature 486, 489 (1975).

⁷ These laws, referred to as "repeat offender statutes," "habitual offender laws," and "Baumes Laws," were designed to increase sentence lengths. They are often used today by the prosecutor to provide leverage in plea bargaining. Legal aspects of these statutes have been analyzed by Phillip H. Ginsberg & Margaret Klockars, *The "Dangerous Offender" and Legislative Reform*, 10 Williamette L.J. 167 (1974).

sources toward such an end constitutes an investment. To the extent that the district attorney, in allocating resources to cases, ignores the criminal histories of defendants as a reflection of potential subsequent criminality, he may be trading away a reduction in future crimes (and work load) for an increase in current convictions.

We have cited institutional arrangements designed so that prosecutors give extra attention to cases involving defendants with serious criminal histories. We know of no evidence, however, which indicates that district attorneys use systematic criteria to determine *how much* more attention to give to these cases. Nor do we know of previous evidence which indicates how much more attention, if any, is actually given to such cases. Given two cases that are about equally convictable, one involving a repeat offender with a minor crime and another involving a first offender charged with a serious crime, what mix of resources should the D.A. allocate to the two cases? How, in fact, does he do so? More generally, how might and how does the D.A. allocate resources to all the cases that have been brought by the police, given, for each case, the strength of the evidence, the seriousness of the offense that gave rise to the current case, and the criminal history of the defendant in this case? These are the issues that we take up in this paper.

In the next section we take Landes' theory as the basis for a single-period model of optimal prosecutor behavior. We then incorporate the problem of handling repeat offenders as an investment decision for the prosecutor, along more explicit lines than discussed above. Next, we use this model to provide the structure for empirical estimation of the relative importance the prosecutor appears to attach to the seriousness of the current case, the defendant's criminal history, and the probability of conviction, as may be inferred from a large sample of decisions by the prosecutor to carry forward cases brought by the police. We then discuss considerations that may affect the accuracy of these estimates. We conclude by discussing implications of these findings.

I. THE SINGLE-PERIOD MODEL

We begin by constructing a single-period model along lines very similar to the Landes formulation.⁸ We assume that

- (1) there are n cases brought to the prosecutor by the police; and
- (2) for the i^{th} case ($i = 1, 2, \dots, n$), the probability of conviction, P_i , depends on the amount of resources, R_i , that the district attorney allocates to the case, and a set of exogenous factors, X_i , such as tangible evidence, testimonial evidence, and so on. We write this relationship as

$$P_i = P(R_i, X_i). \quad (1)$$

⁸ William M. Landes, *supra* note 3, at 62-64.

We assume that increases in R_i produce increases in P_i , so that

$$\frac{\partial P_i}{\partial R_i} > 0. \quad (2)$$

The prosecutor's single-period decision rule will be to maximize the expected number of convictions weighted by the respective severity of the punishment associated with each conviction, T_i , subject to an office budget constraint B , where

$$B = \sum_{i=1}^n R_i. \quad (3)$$

Conditions for satisfying this maximization rule can be derived from the expression

$$E(T) = \sum_{i=1}^n P_i T_i + \lambda(B - \sum_{i=1}^n R_i), \quad (4)$$

where λ is a Lagrangean multiplier. This yields the single-period equilibrium condition

$$\frac{\partial P_1}{\partial R_1} \cdot T_1 = \frac{\partial P_2}{\partial R_2} \cdot T_2 = \dots = \frac{\partial P_n}{\partial R_n} \cdot T_n. \quad (5)$$

Hence, all other factors held constant, the prosecutor allocates more resources to more serious cases and to those for which the probability of conviction is more sensitive to changes in the amount of prosecutor resources allocated.⁹

II. A MULTI-PERIOD MODEL WITH INVESTMENTS IN CRIME REDUCTION

We now introduce an investment element to the model. Assume that

(1) there are n_t cases brought to the prosecutor in period t ; and

(2) for the i^{th} case in period t ($i_t = 1, 2, \dots, n_t$), the probability of conviction, P_{i_t} , depends on the amount of resources, R_{i_t} , that the district attorney allocates to the case, and a set of exogenous factors, X_{i_t} . We write this as

$$P_{i_t} = P(R_{i_t}, X_{i_t}). \quad (6)$$

As before, we assume that increases in R_{i_t} produce increases in P_{i_t} , so that

$$\frac{\partial P_{i_t}}{\partial R_{i_t}} > 0. \quad (7)$$

⁹ We assume also that $\frac{\partial^2 P_i}{\partial R_i^2} < 0$; that is, P_i increases at a rate that decreases with additional increments of R_i .

Overburdened courts and underutilized information technology: a modern prescription for a chronic disorder

by Brian Forst

PR ITW/VS - 19

"There is hardly a political question in the U.S. which does not sooner or later turn into a judicial one." One might well be surprised to learn that these words were written 150 years ago by Alexis de Tocqueville.¹ Yet we are, by any reasonable standard, much more litigious today in the United States than we were then. The number of civil cases docketed in U.S. trial courts is now well over 10 million annually, and growing rapidly (the number doubled from 1962 to 1977).² With the number of criminal cases having grown at a similar rate over the past 20 years, the courts are faced with caseloads and delays of unprecedented proportions.

Four basic paths have emerged to relieving the intense pressures of overflowing court dockets:

- increasing the number of judges, courtrooms, and other adjudicative resources;
- developing alternative dispute resolution mechanisms;

- diminishing the quality of justice, largely through the use of delay and price to ration scarce court resources; and

- improving efficiency in the allocation and use of adjudicative resources.

The first of these solutions, more resources, has become increasingly less attractive as public funds have dwindled. The second solution, alternative dispute resolution mechanisms, has much to offer, especially in the absence of additional judges and courtrooms; plea bargaining is a prominent (although, perhaps, not ideal) example of alternative dis-

1. de Tocqueville, *DEMOCRACY IN AMERICA* 280 (New York: Knopf, 1976).

2. National Center for State Courts, *STATE COURT CASELOAD STATISTICS*, selected annual reports (Williamsburg, VA); Beckwith, *America's Litigious Society*, *ENCYCLOPEDIA BRITANNICA BOOK OF THE YEAR* 489 (1978). The civil caseload in federal courts has grown at an exceptionally high rate, more than doubling from 1969 to 1979 (from 86,000 to 178,000 cases). Administrative Office of the U.S. Courts, *ANNUAL REPORT OF THE DIRECTOR*, selected reports (Washington, D.C.).

trial enterprises of our Nation, has thus far made little headway in the courts."⁵ While some progress has been made in the ensuing years,⁶ the available evidence suggests that today's courts are no closer to most private enterprises in exploiting available information technology than they were in the late 1960s.

Underutilization of modern information processing technology in the courts has been attributed to a variety of factors, including the judiciary's suspicion of the technology and "judges' frequent assertion of special condi-

tions... (that) make computerization of the courts much more difficult."⁷ These barriers, however, are showing signs of erosion; resistance in most courts is beginning to give way to the pressures of increasing case backlogs, the proliferation of powerful small computers in offices and homes, and the growing irresistibility of more productive information systems for the courts.⁸

Available software

A prominent example of advanced technology for managing court information is DOCKETRAC, a member of the PROMIS family of computer software for the legal community.⁹ Derived from a system created originally under federal funding, this software performs a wide variety of management information functions for the court. It automates court scheduling and docketing, and it tracks—from filing to disposition—cases, litigants, witnesses and other case parties, charges, causes of action, and outcomes. In collecting the data needed to manage the processing of cases filed with the court, the system provides information that is crucial both for the day-to-day operations of the court and for assessing and improving court policies

5. Senate Report No. 781, accompanying H.R. 6111, 90th Cong., First Sess. (1967), at 19.

6. See especially Lateef, *Keeping up with justice: automation and the new activism*, 67 JUDICATURE 213 (1983).

7. Nihan and Wheeler, *supra* n. 3, at 668, 680.

8. Forst, *Prosecution and Sentencing*, in Wilson, ed., *CRIME AND PUBLIC POLICY*, 165-82 (San Francisco: Institute for Contemporary Studies, 1983).

9. The PROMIS family of software for case management, produced in Washington, D.C., by INSLAW, Inc., has been singled out by the General Services Administration as a successful example of "application software" suitable for legal case tracking. General Accounting Office, *Federal Agencies Could Save Time and Money with Better Computer Software Alternatives* 25 (Washington, D.C., 1983), (Appendix II letter from GSA to the Comptroller General of the United States, October 14, 1982).

Figure 2 Judge schedule

This inquiry is accessed by judge name. Displayed on the screen or in printed form for the judge specified are the case number, case caption, the next scheduled action date and time, and the expected duration of the scheduled action.

CHANGE MODULE CODE AND ENTER LINE NUMBER () OR CLEAR SCREEN

—JUDGE SCHEDULE—

JUDGE: DOM NAME: DEAN C MERRILL

PHONE: (202) 555-4413

SCHD DATE:

ACTION:

#	SCHED	CAPTION	SCHD DATE	TIME	EST	DUR
01	830001583012001	LANDIS VS JONES CONSTRUCTION	01/20/83	1100	.00+	
02	830000283020101	STATE OF MD VS JONES, PETER L	02/01/83	0900	1.00+	
03	830003183020101	GETZ, JAMES VS COMMISSIONER	02/01/83	1100	.50+	
04	930010083040901	ST OF VERMONT V AHERN, STEVEN	04/09/83	1130	.00+	
05	830000383040901	STATE OF MD VS PAPPAS, JOHN L	04/09/83	0900	.00+	
06	830004093041501	SMITH VS JONES	04/15/83		.00+	
07	830004083042001	SMITH VS JONES	04/20/83	1000	2.00+	
08	830000383060101	STATE OF MD VS PAPPAS, JOHN L	06/01/83	1400	2.00+	
09	830005583081201	STATE OF VT VS MACGINNIS CORP.	08/12/83	0900	.00+	

and procedures. The data base includes information about current case status, preceding events and corresponding dates, forthcoming scheduled events and their dates, case issues, all key people (including attorneys and judges), dispositions and appeals, bail status, docket entries, case notes, and file management information, such as document inventories and locations.

This computer software is currently in use in courts in California, the District of Columbia, Florida, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New York, Ohio, Pennsylvania, Rhode Island, and Virginia, as well as Australia, Canada, Ireland, and Italy. Recognizing

that each jurisdiction has unique data requirements, the system has been designed so that it can be readily "tailored" to fit the specific needs of any particular court, within either a common law or code law system, and in English or any other language. Thus the basic software can be expanded, contracted, or otherwise modified in order that different procedures and terminologies can be accommodated with different data elements and form designs, so that the conditions that make a particular court unique can be incorporated in the system. Examples of some of the basic products of the system—menu, judge schedule, and subpoena—are shown in Figures 1 through 3.

Figure 3

SUPERIOR COURT OF
ANY DISTRICT, USA

SUBPOENA

STATE OF VT VS MACGINNIS CORP.

TO:

John Doe
3452 Chapel Hill Rd.
Burlington, VT 04233

DATE OF ISSUE
February 16, 1983

COURT CASE NUMBER
8300055

COURT APPEARANCE DATE
April 9, 1983

You are hereby commanded to appear as a witness before the Circuit Court, Third Circuit, at 9:00 a.m. on the date shown above and not depart the Court without leave thereof. Report to Room 102, Building C, 100 Main Street, Burlington, Vermont.

If you have any questions concerning your court appearance in this case, call the Clerk of the Court at 555-1212.

WITNESS, the Honorable Chief Judge of the Circuit Court, Third Circuit.

RAYMOND CALDWELL, CLERK

ALICE JACKSON, DEPUTY CLERK

(please bring this form with you when you come to court)

The software itself consists of approximately 85 programs that enable users to enter, retrieve, display, edit, update, print, and back-up data on a computer terminal; to tailor data elements, screen displays, reports, and forms; to select options from "user-friendly" menu screens; to cross-reference to other records and files; and to search files by name (allowing for misspellings), or by date, case type, or specially created data elements. A "generalized inquiry" capability enables users to list cases that meet any particular combination of

selection criteria. A management report capability provides the means to generate aggregate statistics about a variety of phenomena (e.g., the total number of each type of outcome, including counts of the various reasons for postponements and dismissals; bail statistics; number of cases pending at each stage of adjudication; case type summaries). Security passwords may be used to limit access to the system. A debt collection module is available to aid the court in the collection of fines and other financial obligations owed the court.

Limousines and horse-drawn carriages

Courts are beginning to adopt modern computer systems, and many are doing so with relative ease. According to Gerard Ring, Senior Judge of the Olmsted County Court, Rochester, Minnesota: "I think at the outset there was some fear among the judges that the computer would interfere with or disrupt their schedules or manner of handling cases. This has not proved to be so, and in fact most of us are really unaware of the operation of the computer except when we see information on the various printouts we receive."

The Olmsted computer system, which tracks some 20,000 cases annually, appears to have improved the court's operation immeasurably. Robert Miller, System Analyst for the Court, reports that prior to September 1981, when the current system went into operation, "Information about cases was poor; even such basic data as case disposition was incomplete or inaccurate 75 per cent of the time. Now we not only have immediate access to current case information, but we also can access data specific to any of 9,500 defendants who have had cases in our court."

Such a system is also used in California's Courts of Appeal, apparently with similar results. According to Clifford Porter, Clerk of the First Appellate District Court, in San Francisco, "The automated system has relieved the court of the long and laborious task of manually tabulating statistical information about our caseload." Porter says that the court also uses the system "to retrieve information about cases more quickly and easily

than before, to track cases by scheduled events, and to accumulate case statistics through the use of management reports that were simply not available in the manual system."

These sentiments are echoed by Kevin Swanson, Porter's counterpart in the Fifth Appellate District Court in Fresno: "It provides us with the ability to monitor both the total caseload and a particular judge, attorney, or court reporter instantly, and to save many hours of clerical effort."

Saving resources is, of course, a special advantage at a time of fiscal austerity. According to Olmsted County's Judge Ring, "Because of budget constraints the County Board had decided to reduce the staff in all departments by five to seven per cent. This occurred at a time when our case filings were increasing at an annual rate of 10 per cent. Fortunately, the cuts came at a time when the information system was up and testing completed so that we were able to absorb those losses without a major detrimental effect."

Russell Hamill, an administrative officer for the Office of the Executive, Montgomery County, Maryland, who is managing the adoption of a computer system in the county court, characterizes the transition from the manual system as "a quantum leap—the difference between a horse-drawn carriage and a modern limousine." The system, according to Hamill, "should help us to achieve the goals of justice more efficiently."

—Brian Forst

And the software runs on several major brands of computer hardware.

Using the technology

How specifically is court administration improved with such capabilities? First and foremost, such a system makes essential information about the business of the court explicit and readily accessible to those who deliver the services of the court. It produces this information in a way that enables court administrators to assign case hearings and trials to judges and courtrooms with a clear view of the calendars of each judge and courtroom. Such systems thus enable court officials to improve the quality of their service to the public by avoiding schedule conflicts, reducing waiting time, sending subpoenas and other notifications on a timely and accurate basis, and responding quickly to public inquiries. And they increase the productivity of the court's clerical staff by reducing the drudgery of tracking down cumbersome physical files and finding specific information in those files, and by reducing redundant data collection and repetitive typing tasks. In addition, such systems enable court managers to assess court workload and performance by reporting the data in aggregate form, periodically or otherwise. (See "Limousines and horse-drawn carriages," page 35.)

Finally, these systems produce data that can be useful to judges as they make decisions that often have profound effects on civil litigants, criminal defendants and their victims, and others: decisions to set conditions of pretrial release or detention, to continue cases, to hear or suppress evidence or testimony, decisions on the existence of criminal or civil wrongdoing, and on sentences for criminal defendants and awards to plaintiffs. These decisions usually are based on the judge's ability to select and integrate, from large amounts of complicated information about individual cases, those items of information that are relevant to the decision, subject to legal considerations, resource constraints, and the goals of justice. How this information might be integrated to most effectively support judicial decisions has been the subject of intensive exploration at INSLAW and elsewhere, as

part of a larger attempt to develop decision-support systems for the legal community. Data of the sort described above have proven to be a central component of this process.

Conclusion

One of the five "Questions for A New Century" raised in *Judicature's* symposium in honor of the Nation's bicentennial anniversary was: "Will the Courts Meet the Challenge of Technology?" Jethro Lieberman's answer to the question was as follows: "No significant institution has been left untouched by modern technology—with the possible exception of the courts.... Now all that is changing.... (Yet) there is much to be done."¹⁰

In the eight years since *Judicature* addressed that question, much more has changed and much still remains to be done. Many courts throughout the country have successfully adopted automated systems for legal research, case management, rapid retrieval of case information, judge and courtroom scheduling, defendant and witness notification, and report generation. And the technology itself has improved dramatically, with much more computing power in smaller, less expensive machines and with more sophisticated, yet easy-to-use software that exploits the expanded capabilities of these newer machines.

What remains to be done? Court officials can continue to establish precisely how these new technologies can be exploited most effectively to relieve the substantial pressures of ever-growing case backlogs, impatient clients, and charges of unwarranted disparity in judicial decisions. And providers of computer technology for the courts can continue to make the systems as effective and easy to use as possible, and to do so at affordable prices.

In the 1980s there are few problems more serious than those that the court deals with daily, and few capabilities that have expanded more rapidly than those of information processing technology. In a society as advanced as ours, it should not take long for the problem to find the solution. □

10. Lieberman, *Will the courts meet the challenge of technology?*, 60 *JUDICATURE* 85-86 (1976).

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Repelling Repeaters

Law Enforcers Zero In on Those Who Commit Many Crimes, Even if They Aren't Very Serious

By RAYMOND A. JOSEPH

Staff Reporter of THE WALL STREET JOURNAL

NEW YORK—In 254 knife-point robberies over 18 months, the pattern was the same: All the heists occurred in broad daylight in midtown Manhattan. Most of the victims were stores with three or fewer employees, usually women.

Then Larry Wallace went to jail for the unrelated offense of driving a stolen car, and a funny thing happened: The robberies stopped.

In the past, New York police would usually have been too preoccupied with murders and rapes to pay much attention to a coincidence like that in a mere robbery case. But these holdups happened after New York had instituted its Career Criminal Program, which stresses jailing criminals who commit large numbers of crimes, even less serious crimes. The stolen-car driver went free after 30 days, but the police were on his tracks. They nabbed him fleeing, knife in hand, from the scene of the 255th small-store stickup. Eventually, he pleaded guilty to 17 of the robberies and was sentenced to 10 to 20 years.

New York isn't alone in its new emphasis on catching crooks who commit lots of crimes. An estimated 75 to 100 cities, counties and states have adopted similar career-criminal programs in recent years. The Justice Department got the concept rolling in 1975 by providing money for such programs in 11 major cities, including Boston, Detroit, New Orleans, San Diego and Miami, and at one point about 150 career-criminal programs were operating. Many died after federal financing ended in 1980, but others have continued and some jurisdictions have even started new programs on their own.

Career-Criminal Units

Career-criminal programs differ from city to city, but typically they involve changes in almost every step of the law-enforcement process, from catching to sentencing the criminal. Special career-criminal units are set up in police and prosecutors' offices. The police units vigorously investigate frequently committed crimes, like auto theft, or crimes following patterns, like Larry Wallace's robberies—crimes that police often gave short shrift to in the past because of limited manpower and because the crimes didn't involve physical injury or death.

That's one aspect of the program. Another focuses on the criminal rather than the crime. Police and prosecutors dig into the criminal history of suspects in all sorts of criminal cases, from shoplifting to murder. Taking into account such factors as previous arrests, convictions and paroles, the

ing with a "career criminal." In New Orleans, for example, a suspect with five felony arrests or two felony convictions is so defined.

Once law enforcers have determined a suspect to be a career criminal, they prosecute faster than in normal cases. They demand longer sentences and often get them under new laws in some jurisdictions providing lengthier terms for repeat offenders. For the most part, they avoid plea bargaining, in which an accused agrees to plead guilty to a lesser charge in exchange for having more serious charges dropped. To improve the chances of obtaining a conviction, the same prosecutor handles the case from beginning to end.

High Crime Producers

"We concentrate more resources on each defendant," says a spokesman for New York's district attorney's office.

The rationale for chasing so hard after career criminals is that they commit such a high proportion of the crimes. The Washington-based Institute for Law and Social Research studied serious crimes in the District of Columbia between 1975 and 1978 and found that 7% of the criminals committed 24% of the crimes. "By taking these high crime producers out of circulation," says William Hamilton, the institute's president, "you stand to lessen the incidence of crime."

Some law-enforcement officials say their programs have had precisely that effect. "There's no question that incapacitating a lot of highly active criminals has helped in the battle against crime," declares Robert Morgenthau, New York's district attorney. He says New York succeeds in convicting 90% of all career criminals it prosecutes, compared with its 80% conviction rate in felony cases that don't involve career criminals. And 75% of the career criminals receive jail terms.

Just how much credit to give career-criminal programs for the declines in the nation's crime rate last year and the year before is a matter of debate. Criminologists say other factors figured in the drops, particularly a decline in the proportion of adolescents in the general population as the last of the postwar "baby-boom" generation reaches adulthood. People aged 14 to 21 commit roughly half the crimes.

Whatever their contribution to the overall crime decline, career-criminal programs seem likely to continue, and that troubles at least one group other than criminals themselves: civil libertarians. They are unhappy that arrests are used in determining who is a career criminal. "Unless an arrest leads to a conviction, the case shouldn't be used to

ery, staff counsel at the New York Civil Liberties Union.

Mr. Emery also worries that in career-criminal trials, the message that the prosecutors and police try to convey to juries "is that these people are more dangerous than others." He fears juries will convict them because they think they are vaguely "dangerous" rather than because they consider them guilty of the specific crime charged.

One crime that is getting particular attention in many career-criminal programs is auto theft. Although instances of the crime fell 3% last year and 3.6% the year before, there were still over one million cars stolen in 1982, and organized-crime groups are moving into it even as thefts by amateur thieves decline. For those reasons, says Brooklyn's district attorney, Elizabeth Holtzman, "We have stopped treating auto theft as a low-priority offense." She says Brooklyn's main targets are mob-run "chop shops," where cars are dismembered for their parts.

When federal financing was discontinued and many cities were forced to drop or cut back their career-criminal programs, the results were noticeable. In Wayne County, Mich., which includes Detroit, the conviction rate had risen to 95% when the program was in full swing. But with the cutback in federal funding, Wayne County scaled down its program and the conviction rate fell back to around 85%.

In other places, however, career-criminal programs are making a comeback. Delaware, for example, dropped its program with the end of the federal money. But, says an assistant state prosecutor, Steven Walther, "We saw how successful it was. So we started it all over again six months ago, and we expect to keep it going."

PR/IW/PS - 18

LEGAL TIMES

PR [IW] PS - 17

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System Holds PROMIS

U.S. attorney's offices nationwide are going on line with PROMIS, the Prosecutor's Management Information System developed by D.C.-based INSLAW, Inc., to enable the offices to track and manage debt collection, civil criminal cases by computer. Full-powered computers are being installed at large offices, while small offices are hooking into the system through the use of specialized software in already existing word processing systems.

Since last September, systems have been installed in Los Angeles, Boston, Seattle, Pittsburgh, Chicago, Philadelphia, Atlanta, and Baltimore. Completion is expected at 47 more offices within the next 12 months, and at the remaining 38 offices during the following year. Only the U.S. attorney's office in Washington, D.C., where management procedures differ, will go without the system.

Two full computer systems (in San Diego, Calif., and Newark, N.J.) and two using word processing equipment (in Burlington, Vt., and Charleston, W. Va.) had been installed in 1981 as pilots.

The impetus for the system's installation came from Justice Department officials who realized their ability to set and influence policy is contingent upon their knowledge of what is going on, said INSLAW president William A. Hamilton. Without the system, he explained, the lag time for obtaining data and the poor quality of data obtained was severely limiting the department's influence.

In addition, said Hamilton, the Office of Management and Budget pushed for the system's installation for aid in debt collection. "The OMB is deeply concerned with getting better quality data" for use in determining the reasonability of budget requests, and on debt

collection track records, he added.

Using PROMIS, attorneys and support staff are able to track case progress, produce forms and documents, and allocate resources more equitably, and management can quickly call up a large base of data from the Justice Department's scattered troops, according to Hamilton.

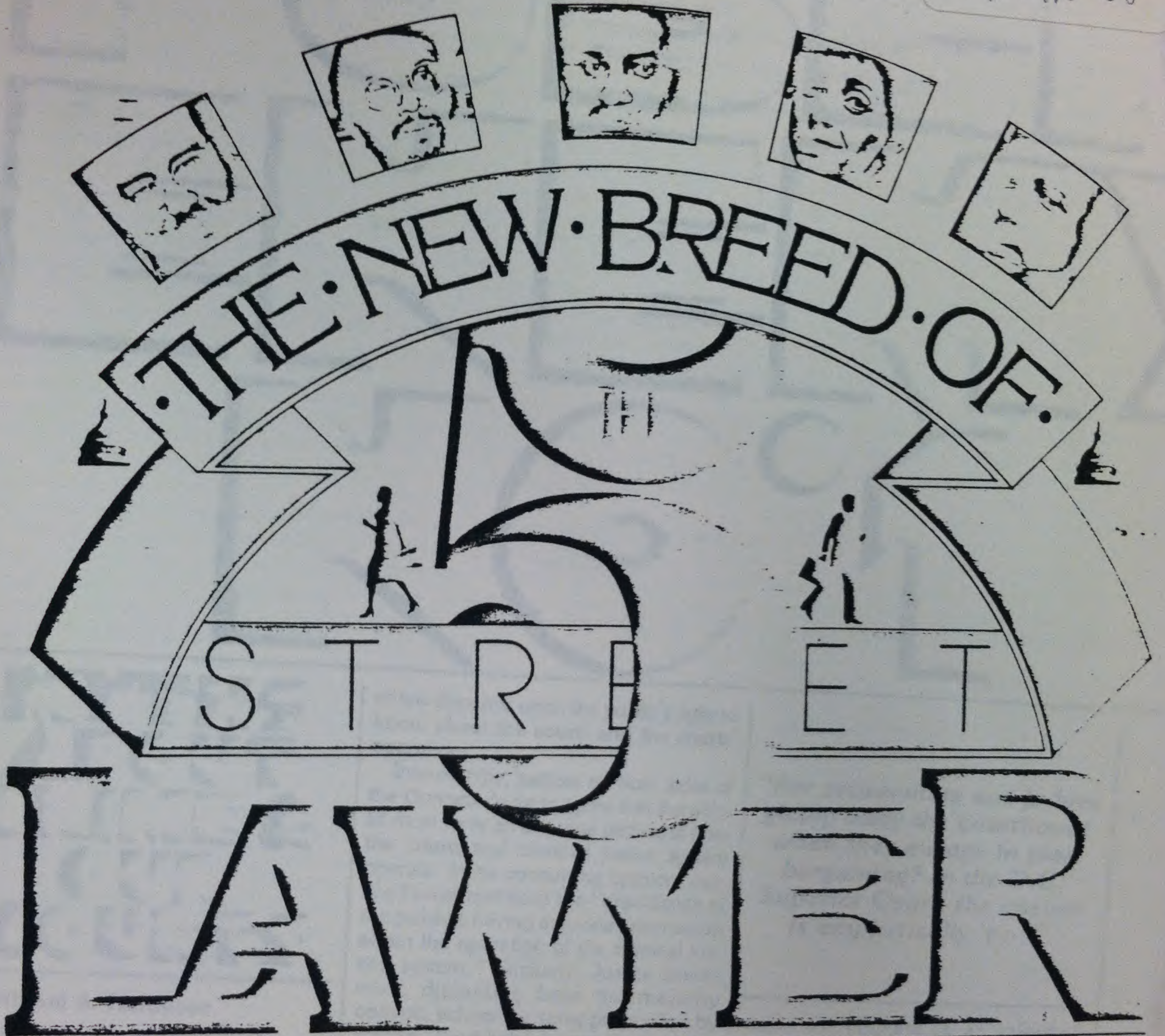
Reactions to the systems already installed are generally positive, said Hamilton, even though the system causes "fairly significant change in the level of precision required in record keeping" in exchange for better quality data. Despite the extra care needed, he said, "there hasn't been any revolt." ■

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■ ■ ■ A Fresh Look At CJA Practice in Washington ■ ■ ■



Myth vs. Reality in Courts ■ Tax Aspects of Condo Conversion

■ Ethics Committee Proposal: Prohibition on Maintenance ■

PUBLIC HEALTH RISK

MYTHS ABOUT CRIME & COURTS

By William A. Hamilton

The Supreme Court's recent decision in *Gannett v. De Pasquale* permits pre-trial hearings to be closed to the public and press when the defense claims publicity could be damaging and the prosecution offers no objections. (47 U.S.L.W. 4902, July 2, 1979) Lawyers, legal scholars, and members of the press in some instances vehemently have attacked the decision as an affront to the belief that public confidence in the rule

William A. Hamilton is president of the Institute for Law and Social Research.

of law depends upon the public's right to know about the courts and the courts' operations.

Interestingly, justices on both sides of the *Gannett* decision agree that the public must have an accurate picture of how the courts and criminal justice system operate. In his concurring opinion, Justice Powell mentions the "importance of the public's having accurate information about the operation of the criminal justice system." Similarly, Justice Blackmun, dissenting from the majority opinion, echoes the same proposition by stating, "publicity is essential to the preservation of public confidence in the rule of law and in the operations of the courts."

The publicity given to the case brings into sharp focus the issue of public knowledge of courthouse operations and the workings of the criminal justice system. Many of the statements heard through the media seem to assume that prior to *Gannett* no obstacles prevented the public from discovering how the legal system works. This confidence was badly misplaced. In fact, we have had a

"Are prosecutors and judges giving away the courthouse when they engage in plea bargaining? In the D.C. Superior Court, the answer is emphatically 'no.'"

major impediment to an informed citizenry all along. That impediment has been the lack of aggregate data on the operations of the courts. In the absence of this kind of overall picture, the press has tended to focus on individual cases or episodes without any knowledge of whether these cases are typical of the real behavior of the courts. The public is treated to an unending succession of individual dramas in the courthouse without any way of synthesizing these into a well rounded picture of what really is happening. As a result, many myths have developed in such areas as felony

PROMIS data indicate that one of the two most commonly recorded reasons for felony case mortality is police failure to collect sufficient evidence."

cases that are dropped, bail reform and repeat offenders.

Irrespective of what Gannett means for public access to the details of individual cases in the future, it seems obvious that the press and the public will need to have access to aggregate data about the operations of the court. Such data presumably pose none of the problems of damaging the rights of defendants. At the same time, the aggregate data may be far more important than data about one individual case to the public's ability to monitor its court and prosecution institutions, to influence their behavior, and to maintain confidence in the rule of law.

A recent series of empirical studies of the District of Columbia Superior Court serves to illustrate the point that the public has lacked an accurate picture of the operations of the courts, even prior to Gannett. The studies, which will be highlighted in this article, were financed by the U.S. Law Enforcement Assistance Administration (LEAA) and conducted by the Institute for Law and Social Research (INSLAW). Data for the studies came from the computerized case files of the U.S. Attorney's Office, D.C. Superior Court Division. The computer system, known as PROMIS, contains data on approximately 150,000 cases processed during the past eight and one-half years. With LEAA assistance, about 150 other cities throughout the United States are following the District's lead by installing PROMIS.

Felony Case Mortality

"Most felony cases dropped" was the front page headline across the top of the *Los Angeles Times* on April 25, 1977. It also underscores one of the important insights provided by PROMIS data in Washington, D.C., Los Angeles County, New Orleans, and a host of other jurisdictions. Although the general public and the special publics of prosecutors, judges and defense counsel may be con-

ditioned to think that plea bargaining is the most common business of the criminal courts, it is not. Actually, most felony arrests are either refused prosecution or dismissed without plea, or trial. When an assistant prosecutor takes the administrative action to refuse or dismiss a typical, "humdrum" felony, there is very little dramatic content to arouse press interest, but these routine, undramatic administrative decisions cumulatively describe a large part of the rule of criminal law.

There is also a general misunderstanding of why most felony arrests are dropped. One popular answer is the exclusionary rule. The general public believes that the Supreme Court has tied the hands of the police through an obsessive concern with technicalities. Lawyers view it as the doctrine by which tainted evidence, i.e., evidence collected in the course of violating the Fourth Amendment right of the accused to be secure against unlawful search and seizure, is declared inadmissible in court. Yet, the exclusionary rule accounts for less than 2 percent of the felony case dismissals in the District and in many other jurisdictions that use PROMIS.

Recently Senator Edward Kennedy asked the General Accounting Office to take an inventory of the exclusionary rule problem in a sample of federal courts across the country to assist the Senate Judiciary Committee, which he chairs, in determining whether remedial legislation was needed. GAO found the problem to be much less consequential than supposed, similarly affecting only about 2 percent of the felony cases. Thus, according to press accounts, Kennedy decided against the need for new legislation on the basis of the GAO statistical evidence.

One asks then why so much public and scholarly debate persists about the exclusionary rule when it appears to be of so little consequence in the overall operation of the felony courts. The probable answer is that we have had no composite picture of the operations of the courts. Consequently, when an important case against a serious offender is aborted because of the exclusionary rule, one has no way of putting the problem in context.

PROMIS data indicate that one of the two most commonly recorded reasons for felony case mortality is police failure to collect sufficient evidence. A lawful arrest requires only probable cause, but to secure a conviction, the evidence

must support a standard requiring proof beyond reasonable doubt. Yet while the police may be properly skeptical of this reason, since it is recorded by the prosecutor but concerns police performance, there is strong circumstantial evidence of its validity. A small proportion of the arresting officers (15 percent) account for more than half of the arrests during the year that result in convictions, and almost a third of the officers who make arrests account for no convictions. Successful officers systematically are more likely to recover physical evidence in their cases, which, in turn, dramatically enhances the probability of conviction. Further, they find citizen witnesses who persist in their willingness to cooperate in court. In defense of the police, who in most cities do not include the quality of arrests as a factor in evaluating an officer's or commander's performance, the data on the outcomes of the arrests in court have simply not been available in a form useful to police management. As these kinds of data become more routinely available through the computerization of court and prosecution records, it seems inevitable that public pressure will cause arrest quality to become a significant factor in the evaluation of police performance. And that will be one step forward in transforming the independent fiefdoms of the criminal justice community into a working criminal justice system.

The other leading reason cited in PROMIS for the heavy case attrition involves problems with victims and witnesses, such as failure to appear in court on schedule or loss of interest in testifying. Researchers conducted household interviews with almost 1,000 victims and witnesses involved in D.C. Superior Court cases and concluded that many witnesses who appeared uncooperative to the courts simply had not been notified or else did not understand where and when they were supposed to appear or what they were expected to do. Names, addresses and telephone numbers were frequently wrong because insufficient care was exerted by police in obtaining accurate information at the crime scene. On the other hand, some witnesses who were notified never received adequate explanations from prosecution and court officials of what was expected of them. Other witnesses expressed fear of reprisal, and they complained that police asked for their names and addresses in front of the accused. Based in part on these statistical data, LEAA established

District Lawyer

grant program to provide victim-witness assistance programs to prosecutors' offices and courts. The D.C. Metropolitan Police Department produced a training film for officers on how to record witness data correctly and on how to avoid adding to the victims' fear of reprisal. Similarly, the U.S. Attorney's Office recently established its own victim-witness assistance unit. The American Bar Association held national hearings in Washington, D.C., this spring on the problem of witness intimidation, and the data from the D.C. Superior Court again served as a primary catalyst for concern.

Plea Bargaining

The notion that arrests normally end in guilty pleas is not the only common misperception about plea bargaining. Another has to do with leniency in the courts. Are prosecutors and judges giving away the courthouse when they engage in plea bargaining? In the D.C. Superior Court, the answer is emphatically "no." For most of the high volume serious crime, defendants who plea bargain generally receive the same sentences as are given to similarly situated defendants found guilty at trial of the most serious charge. Since prosecutors obtain the same results without encountering the risk of acquittal at trial, plea bargaining can be viewed as a more effective tool of crime control than going to trial. It is also much less expensive. A separate INSLAW study in another city found that trials consume about four times as much prosecutor time as pleas. How is it then that the extensive public debate on plea bargaining could be based on such unsupported assumptions? The answer again is that we have formed opinions and recommended policies based on reactions to individual, dramatic cases. We have not had the kind of quantitative data on the daily operations of the court needed to put our personal recollections of individual cases into context.

Career Criminals

Quantitative data, however, do not always contradict the perceptions of the public. For example, many people accuse the courts of operating a revolving door for habitual offenders. There seems to be a solid basis for this view. A small proportion of the persons arrested (7 percent) account for a very large proportion of the cases (24 percent) brought to the D.C. Superior Court—each was arrested on at least four separate occasions in a period of less

than five years and there is no statistical evidence that prosecutors devoted any extra effort to the cases of the 7 percent based on the disproportionately serious effect these few offenders had on the crime problem.

The statistical documentation of this problem produced results. LEAA established its Career Criminal Program to assist local prosecutors' offices in assigning special cadres of experienced lawyers and investigators to give intensive preparation to cases that involve the most serious repeat offenders. The U.S. Attorney's Office established both felony and misdemeanor Career Criminal Programs, and devoted extra pretrial investigative and prosecutive time to the cases of the most serious, habitual offenders.

Pretrial Release and Bail

Bail provides another example of how statistical data can help galvanize attention to a problem long perceived by the public. Press accounts frequently document the fact that defendants with one



"The press has tended to focus on individual cases or episodes without any knowledge of whether these cases are typical of the real behavior of the courts."

case already awaiting trial are rearrested for a new crime. Statistical analyses of the PROMIS data helped to clarify the dimensions of this problem and, in so doing, have aroused the public attention of two members of the Senate Judiciary Committee, Edward Kennedy and Birch Bayh. According to the data, about 17 percent of the people arrested in Washington have another case pending in the courthouse. Of those defendants released prior to trial, about three times as many are arrested for new crimes while out on bail (about 13 percent) as willfully fail to appear (about 4 percent). Yet in most states, bail laws limit the

retion to guaranteeing the appearance in court. Even the problem of danger to the community, as measured through re-arrest while on bail, is a significantly frequent problem, the bail laws generally do not authorize judges to take this problem into account openly and explicitly. On June 1, 1979, Senator Kennedy in an address to the National Governors Conference on Crime Control, said the failure of the bail laws to equip judges with a fair and constitutional tool for handling the more frequent problem of crime on bail, in effect, forces judges to "jail offenders because of danger, while adopting the transparent pretext that the offenders pose a risk of flight." On May 31, 1979, Senator Bayh, in a speech in Louisville, Kentucky, to a national conference of prosecutors, stated:

"Presently, the courts are placed in an impossible quandry. Understandable public furor with crime on bail places pressure on the court to detain serious offenders prior to trial. Most of our statutes, however, authorize the judge only to concern himself or herself with the issue of a defendant's future appearance in court, not his future crime. Thus, judges who respond to pressures for community protection must often do so by pretending that the defendant is being jailed because of fear of his not showing up in court. This quandry needlessly exposes our judiciary to charges of hypocrisy, and to public cynicism."

Based on the statistical evidence of the dimensions of the problem, Senator Kennedy made a four-point proposal for new legislation to allow the court to take "into account the legitimate concern of the public about community safety." This new concern for crime on bail need not translate into larger pretrial jail populations. The INSLAW PROMIS-based study estimates that many of those who currently remain in jail prior to trial are not bad risks in regard to either willful failure to appear or crime while on bail. By clarifying the legitimate objectives of bail, and establishing criteria that have a proven statistical relationship to those objectives, researchers predict that both failure to appear and crime on bail could be reduced without any increase in pretrial jail populations.

Court Delay

For many citizens, mention the word court and you can almost guarantee they will think of delay. In a study of delay in

"Punishment often depends too much on the predilections of the judge who happens to sentence."

the D.C. Superior Court, researchers again reach some surprising conclusions. First, contrary to almost universal belief, delay on the felony calendar did not bring with it any appreciable deterioration in convictability. Although there are almost certainly important individual cases that are lost because delays dull the memories of witnesses, in the overall business of the felony courts, the present level of delay does not seem to be harming the convictability of cases. This certainly does not imply that delay is therefore a good or a neutral thing. No one would argue with the defendant's right to a speedy trial. What it does suggest, however, is that proponents of speedy trial, who base their advocacy on the expectation of increased crime control, should be more cautious. Without either increased resources or increased productivity, the adoption of strict limits on pretrial delay would actually decrease the volume of convictions. Second, the study suggests that increases in productivity may be more important than increases in resources in reducing delays in felony trials. The reason for this is that the readiness of an individual judge to grant continuances better explains the delay than the number of other cases in the queue, the number of judges and prosecutors available to hear them, or the seriousness or complexity of the cases.

Sentencing

A major feature of the bill now pending in Congress to recodify the federal criminal laws is the specification of a much narrower range of sentences for various types of crime and offenders with various types of prior criminal records. The rationale for this change is that the present indeterminate structure is unfair to defendants because their punishment often depends too much on the predilections of the judge who happens to sentence them. A study of felony sentencing practices in the D.C. Superior Court found some justification for this concern. Almost four out of every 10 sentencing decisions could not be explained even after examining some 200 factors about the prior criminal record of the defendant, the seriousness of the

current case, and aggravating and mitigating circumstances. The speculation that unmeasured differences in the attitudes of individual judges were responsible for part of this inability to account for what was happening was based on the observation of sharp differences among judges in their willingness to impose incarceration. For example, some judges appeared to be twice as likely as others to incarcerate similarly situated offenders.

Gun Control

Finally, no discussion of crime would be complete without mentioning the issue of gun control. The PROMIS data indicate that prosecutors and judges attach greater urgency to crimes when they involve guns or other types of weapons. The use of a weapon increases the probability of conviction and the severity of the sentence. But a study of the use of weapons found an important anomaly: some offenders injure their victims in almost all of their criminal episodes but use a weapon in only some of their episodes. Yet, the urgency shown by the prosecution and court when a weapon is involved is clearly greater than the urgency shown about cases that do not involve a weapon but that do involve injury to the victim. Unwittingly, our understandable preoccupation with the danger of lethal weapons may have blinded us to another form of serious danger in the behavior of offenders: a propensity toward inexplicable violence. This finding could in time spur a new effort among prosecutors and judges to deal more severely with offenders who repeatedly injure their victims.

Conclusion

Public misperception about street crime, bail, etc., can result from individual cases that make headlines but do not typify the system. Felix Frankfurter and Roscoe Pound clearly articulated this problem over half a century ago when they co-authored an empirical analysis of the Cleveland criminal courts: "The system is judged not by the occasional dramatic case, but by its normal, humdrum operations. In order to understand how law functions as a daily instrument of the community's life, a quantitative basis for judgment is essential." Policy changes and legislative initiatives based on statistical studies are beginning to prove that once the public has a well rounded picture, we begin to see changes in the policies and priorities of the institutions. ■

10/14/79

PR (IW) PS-09

Our criminal justice sieve

Anyone not familiar with our criminal justice system must have had a hard time believing a study commissioned by the chief judge of the juvenile court and reported this week in The Tribune. In July, the only month studied, 60 per cent of all cases on five randomly selected calendars never reached adjudication.

However, the news that the criminal justice system is a sieve is sadly credible to those who work in or near it—and more to the point it's a happy truism to those who work against it.

At every stage, from the moment a crime is reported to police through the investigation, arrest, and pretrial stages, offenders slip free without even having to face trial.

Occasionally a case, such as the one described by Tribune reporters William Recktenwald and Mark Starr in today's news pages, captures public attention. Four youths are arrested and charged with beating to death an 82-year-old man on a lake shore bicycle path. A trial is held. Sloppy work by police and prosecutors results in a judge's decision that the state failed to make its case. People express outrage at the "leniency" of the judges.

And yet it is not the permissiveness of judges—nor even the procedural requirements placed upon police and prosecutors by the Supreme Court—that is primarily responsible for encouraging the street-wise offender. The criminals are encouraged by the knowledge that they will probably never have to face a judge. The system is so full of holes that with any wit or luck at all they will be able to slip away without jeopardy.

In one sense, the leakage is all that keeps the criminal justice system working. When crime rates began to rise steeply in the 1960s, it was unequipped to handle the deluge of cases. Informal

devices administered by police and prosecutors weeded out many cases. [In this regard the juvenile court statistics are particularly revealing because it is commonly believed that the proportion of juvenile offenders who are referred to the court is small in comparison with adults. The cases that are referred are compelling ones. Even so, 60 per cent of them are dropped.]

If the informal devices—and the gaping holes in the system—that provide escape routes for so many defendants did not exist, the system would collapse under its own weight. There are simply not enough judges, prosecutors, and prison cells to handle the rush.

The leakiness of this system works to the particular advantage of the street-wise offender. He is possibly the most dangerous individual and the most deserving of punishment—yet he is also the one most likely to escape without punishment.

While it would be prohibitively expensive and probably impractical to try to enlarge the system at this late date, there is one relatively inexpensive technique that makes the management of the prosecutor's caseload more rational. It is a computer system that goes by the name of PROMIS. It is being used successfully elsewhere in the United States. And it allows the prosecutor at least to locate the places where the system is hemorrhaging and try to stem the flow.

State's Atty. Bernard Carey has for some time sought to persuade the County Board to apply to the U.S. Law Enforcement Assistance Administration for funding to install such a system here. So far the County Board has not acted.

In the rather dismal landscape of Cook County criminal justice, PROMIS is about the only promising feature. It ought to be pursued.

PR(IW)/PS - 10

Improving Prosecution?

THE INDUCEMENT
AND IMPLEMENTATION
OF INNOVATIONS FOR
PROSECUTION MANAGEMENT

David Leo Weimer

1980
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The research effort was aided by numerous public officials. **D. Lowell Jensen**, the Alameda County (California) district attorney, encouraged the research and provided complete access to his office and helped me gain access to other sources. Many other members of the Alameda County District Attorney's Office, particularly Richard Nishimoto, cheerfully answered numerous questions. Other prosecutors who allowed me to visit their offices were: District Attorney George Darden of Cobb County, Georgia; District Attorney Harry Connick of New Orleans, Louisiana; U.S. Attorney Earl Silbert of the U.S. Attorney's Office in Washington, D.C.; and Prosecuting Attorney William Cahalan of Wayne County, Michigan.

xiv Acknowledgments

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William Hamilton and Dean Merrill of the Institute of Law and Social Research provided me with information, documents, and work space during my visit to Washington. Joan Jacoby and Charles Work, pioneers of prosecution management, adjusted their schedules to accommodate my interviews. Alvin Ash and Mary Ann Beck of the Law Enforcement Assistance Administration quickly provided information I requested.

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The choice of PROMIS had the consequence of foreclosing the consideration of alternative case management information system designs. About the time PROMIS was being prepared for transfer, DALITE began operation. Yet no effort was made to determine whether it might provide a better prototype for diffusion than PROMIS. Such a study might have led to adoption of the mini-computer concept that has contributed to the greater success of DALITE in producing logistical support information. Instead, this modification was forced on the PROMIS Transfer Project administrators after several years by the research and development efforts of one of the PROMIS adopters. Although our study would lead us to believe that the PROMIS Transfer Project will continue to improve the prototype through incremental changes, it raises the prospect that major changes of a desirable nature will be avoided.

Has the PROMIS Transfer Project improved prosecution? That PROMIS adopters achieve at least some benefits suggests an affirmative answer. But at what cost? Both in terms of expended resources and opportunity costs, the cost is very high indeed.

INDUCED DIFFUSION IN A GENERAL CONTEXT

Consistent with a growing literature from a variety of substantive fields, we observed that innovations in prosecution management often fail to yield their potential benefits because of unanticipated difficulties that arise during their implementation. Such a finding is no longer surprising and perhaps is of little general interest. At several points, however, observations that should be of general interest were made concerning the importance of not excluding consideration of implementation questions in the study of innovative processes. Three observations about the study of the implementation of innovations are worth noting here.

First, the process by which local public agencies select innovations is likely to involve social inefficiency when the choice set consists of innovations requiring implementation efforts of extended duration, high cost, and uncertain outcome. The benefits of desirable innovations may be forgone if reliance is placed solely on local financial sources because of the difficulty local public agencies face in secur-

U.S. Judges' Sentencing Disparity Found Wider Than Believed

By RONALD J. OSTROW, Times Staff Writer

WASHINGTON—Federal judges, presented with identical hypothetical cases, varied in punishing "offenders" from releasing them on probation to sentencing them to 25 years in prison, a Justice Department-funded study reported Monday.

Even so, 64% of the judges said they felt "unwarranted sentence disparity" occurred in their jurisdictions either never or only occasionally.

The \$1.2-million study, a copy of which was obtained by The Times, is being used by the Justice Department to push for congressional enactment of sentencing guidelines for judges. The guidelines are part of the Reagan Administration's federal criminal code reform package.

6,000 Cases Reviewed

Completed last May, the study was conducted by the Washington-based Institute for Law and Social Research and Yankelovich, Skelly & White, a New York research firm. The three-year project included reviewing data from nearly 6,000 pre-sentence investigations and interviewing 264 federal judges.

The findings "point to a greater amount of variation (in sentencing) than was previously thought to exist," said Jonathan C. Rose, assistant attorney general for legal policy. "They demonstrate unequivocally the extent to which the variations are associated with the differing attitudes of federal judges toward the goals of sentencing and the best methods for achieving those goals."

Earlier such studies have been criticized for failing to take into account differences between individuals who have violated the same law. In this study, judges were presented with 16 hypothetical, identical bank robbery and fraud cases to prevent differences in defendants from influencing their decisions.

From No Term to 20 Years

In nine of the 16 cases, some judges recommended sentences of at least 20 years while others recommended against imprisonment altogether.

The study found that the primary reason for the disparity was the judges' general tendency toward toughness or leniency—not defendants' race or economic status, as some judicial critics contend.

Judges also differed sharply over whether they should seek to rehabilitate criminals in sentencing them or merely try to see that they got their "just deserts."

One-fourth considered rehabilitation extremely important, while nearly one-fifth ranked it as no more than slightly important.

Although one-quarter of the judges regarded "just deserts" as a very important or extremely important goal in meting out a sentence, nearly twice as many considered that goal only slightly important or not important at all.

As a whole, the judges tended to regard deterrence of further crimes and the

"incapacitation" of those convicted as considerably more important than other goals in sentencing.

In addition, the study found a sharp difference between how federal prosecutors and defense lawyers rate current sentencing procedures by judges and how the judges assess it. Nearly three-fourths of the judges considered current sentencing practices at least adequate,

while more than half of the 103 prosecutors and 111 defense attorneys found it fell short of what they thought sentencing should be or was in fact very unsatisfactory.

The study also documented one distinct regional variation: Southern judges recommend sentences systematically more severe than those recommended by their colleagues elsewhere.

PR[EW]/PS - 11

Rivalries of Agencies Bar Prosecutions

Criminals Go Free as Authorities Refuse to Cooperate, Study Finds

By RONALD J. OSTROW, *Times Staff Writer*

WASHINGTON—A federally financed study suggests that thousands of lawbreakers are escaping prosecution because of jurisdictional rivalries between state and federal law enforcement authorities.

The \$250,000, two-year study, which was prepared for the Justice Department, has not yet been released, but a copy was given to The Times. The study is a subject of intense controversy within the department, with some critics questioning the way it was conducted and opposing its release.

Conducted by INSLAW Inc., a Washington-based research firm specializing in law-enforcement analysis, the study turned up sharp differences in the degree of cooperation between the five main federal investigative agencies and state and local prosecutors.

Case Becomes 'Tainted'

It said agencies that emphasized cooperation with other agencies, such as the Postal Inspection Service, often achieved the highest rates of conviction, while the investigations of those that did not, such as the FBI and Secret Service, yielded lower conviction rates.

The study described a process whereby some cases are rejected by U.S. attorneys who expect them to be handled by local authorities. But local prosecutors often decline them as well, "and federal investigators are loath to present them again to U.S. attorneys."

The reverse is sometimes true, too, according to INSLAW. "Once a case is declined by federal prosecutors, it often becomes 'tainted' in the eyes of local prosecutors, who are reluctant to accept cases viewed as trivial by their federal counterparts," the study said.

It cited "the prospect that lack of coordination between federal and non-federal authorities may result in a criminal incident being prosecuted by neither federal nor state-local authorities."

Accompanying the study were tables and statistics indicating that thousands of lawbreakers could be escaping prosecution.

"The process of coordination between federal investigators and prosecutors and between federal and state-local criminal justice agencies is extremely uneven and stands to be improved in most of the districts studied," INSLAW reported.

Difficulties in coordination led to a loss of cases that could have been avoided, the study concluded.

The study's results provide support for the emphasis that Atty. Gen. William French Smith has been placing on law enforcement coordinating councils. Those councils, set up in about two-thirds of the 94 federal judicial districts, are designed to coordinate investigative and prosecutive activities by federal, state and local authorities.

Coordination takes on added importance as the federal government shifts its law enforcement emphasis, leaving more crimes of "dual jurisdiction"—acts that violate state or local laws as well as federal—to state and local authorities.

'Dual Jurisdiction' Offenses

The study focused on nine "dual jurisdiction" offenses investigated in the fiscal year that ended Sept. 30, 1979, which included bank robbery, mail theft and forgery, auto theft, interstate transport of stolen property, mail fraud, drug offenses, cargo theft and weapons violations.

Fourteen of the 94 federal districts, among them Los Angeles, San Diego, Las Vegas and Manhattan, were analyzed. Those areas account for 17% of the federal criminal case load and 16% of reported violent crime, according to FBI statistics for 1979.

The investigative agencies studied were the FBI, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms, the Postal Inspection

Service and the Secret Service. They account for about 72% of the cases presented for prosecution by federal investigative agencies.

Asked about the FBI's practice of not taking its investigative findings to state or local authorities when they are rejected by federal prosecutors, Roger S. Young, assistant FBI director for public affairs, said, "We have a policy that referral (to state and local prosecutors) is to be made by the prosecutor . . . I'm not able to assure you that nothing slips between the cracks because I'm told it does."

Influence of Referrals

As an example of the influence that referrals can have on conviction rates, the study contrasted check forgery, which is under Secret Service jurisdiction, with mail theft, which is handled by the Postal Inspection Service.

While check forgery and mail theft often follow similar patterns—for example, a U.S. Treasury check typically is stolen from the mails and a signature is then forged to cash it—prosecutors accepted the cases at sharply different rates. Check forgeries were accepted 47% of the time, while mail theft was accepted 91% of the time, according to the study.

Federal prosecutors took on the cases at almost identical rates, but state and local authorities accepted only 10% of the forgery cases while taking 52% of the mail-theft investigations.

The study attributed the difference to the postal inspectors' presenting 54% of the mail theft cases directly to state and local prosecutors, while the Secret Service presented only 9% of the check forgery cases.

"The result was that 46% of all check-forgery cases went unprosecuted," the study said, "as compared with only 6% of all mail theft cases."

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Street-Crime Drive

D.A.s' Special Teams Win Stiffer Sentences For 'Career Criminals'

But Do They Crack Down On Worn-Out Offenders Instead of Active Ones?

Forget About Plea Bargains

By ROBERT E. TAYLOR

Staff Reporter of THE WALL STREET JOURNAL

LOS ANGELES—When Deputy District Attorney Dan Murphy saw Charles W. Conley's criminal record, he told Conley's attorney to forget about plea bargaining. "We're going to the wall with this guy," Mr. Murphy said.

Conley, 49 years old, was charged with a series of robberies and rapes, but some of the distraught victims couldn't even identify him. Normally, a prosecutor might have considered letting Conley plead guilty to lesser offenses and draw perhaps 10 years behind bars.

But Mr. Murphy openly set out to lock up Conley "for the rest of his life." He spent hours coaxing one victim to return from Wisconsin to testify. He had a crime-scene photograph enlarged to reveal a boot print similar to Conley's. With charts and careful measurements, he showed that Conley could have committed the crimes just before and after work, disposing of the alibi that Conley was on the job. The jury found Conley guilty on all counts. The judge gave him the maximum term, 60 years in prison.

Why so tough? Conley had prior convictions for assault, kidnapping and robbery. This targeted him for the relentless treatment that is provided by lawyers like Mr. Murphy in this city's Career Criminal Prosecution Unit.

Designed for Crackdown

Career-criminal units—also called habitual-offender units, among other names—are designed to crack down on a relatively small number of repeaters who are blamed for committing a huge proportion of street crimes. Generally, the units gather the most experienced prosecutors, give them more time for each case, and tell them to spurn plea bargaining and to seek long prison terms.

Mounting evidence shows that the units put more of their defendants behind bars, and put them there longer, than do other prosecutors. "The surest way to a state prison term in California today," says a state study, "is to be prosecuted and convicted by the Career Criminal Prosecution Units."

The idea was pioneered in New York City's Bronx and in San Diego, Calif., in the early 1970s. Briefly spurred by federal dollars, it has been adopted by more than 100 prosecutors' offices nationwide, and its emphasis on repeat offenders is spreading to other areas of law enforcement.

Last September, for example, the New York City police department singled out almost 6,000 suspected career criminals who had prior robbery arrests for added investigation if they are arrested again. Chicago has set up special Repeat Offenders Courts, known as "the rock," to dispense swifter justice to career criminals and avoid plea bargaining. And although the idea of providing for or requiring longer terms for repeat offenders isn't new, the number of states with such laws has risen to 45, and 29 have

Spurred by Findings

The focus on habitual offenders stems from criminologists' findings. In one study by Prof. Marvin Wolfgang of the University of Pennsylvania, only 18% of the criminals committed more than half the crimes of the whole group. Another study of 243 drug addicts in Baltimore concluded that they committed more than half a million crimes in their lifetimes.

The best evidence that the special prosecutions work is a 27-month study of 12 career-criminal units in California. It found that although they only slightly increased the conviction rate overall, they increased convictions on the most serious charges to 85% from 60%. And their average prison sentence was five years and four months, almost a year longer than in similar cases handled through normal channels.

Some question these statistics. Los Angeles's public defender, Wilbur Littlefield, says the units "usually pick the sure winners—aces, straights and cinches." Rand Corp. researcher Peter Greenwood remarked last year that "with a little careful screening you can achieve whatever performance levels you want."

But prosecutors strongly deny such manipulation. And they have converted Mr. Greenwood, who today joins many criminologists in arguing that the units do curb crime.

Too Much, Too Late?

Some street-smart people agree. Upon their arrest, three persons here have begged police to keep their cases away from the career-criminal unit. And generally, the units are popular with prosecutors. Only a few units have been dropped in the past three years as federal aid for them has dried up.

The programs' strongest criticism comes from criminal experts who say they may be cracking down on criminals too late in life.

Several studies have shown that burglars, for instance, are most active between the ages of 15 and 22. Yet they aren't likely to be singled out as career criminals until late in that period. Why? Because even incorrigible juveniles seldom draw long sentences, and when they become adults, they generally start out with a clean criminal record. By the time they acquire a record long enough to be singled out, their criminal career is likely to be waning.

"The criminal-justice system is more likely to punish an older and often worn-out offender than a young and very criminally active one," argues Barbara Boland of the Institute for Law and Social Research here.

Several states are allowing more juveniles to be prosecuted as adults for serious crimes. Vermont allows murder trials for 16-year-olds. A few states also are giving juvenile records to prosecutors so that young career criminals can be spotted sooner.

Some laws that require longer terms for repeat offenders also stir controversy. Norval Morris, a professor of law and criminology at the University of Chicago, says such statutes "very rarely work well" because they require long terms for "too many minor offenders." In one case, recently upheld by the U.S. Supreme Court, Texas courts gave a man a life sentence for three fraudulent transactions netting him a total of only \$229.11.

Alvin Bronstein, the head of the American Civil Liberties Union prison project, calls it "inherently unjust" to impose a longer sentence because of prior crimes for which an offender already has served time. "You're punishing a person two times for the same offense," he argues.

Shrugging off such qualms, the Rand Corp.'s Mr. Greenwood says that attempts to rehabilitate criminals or deter them haven't been effective. He contends that the only proven way to curb crime is to lock up the most incorrigible offenders, and criminologists generally agree.

could cut its prison population of robbers by 5% while reducing the robbery rate by 15%. The answer, he says, is to stretch terms for habitual offenders while shrinking them for others.

Critical to such estimates are the criteria used for singling out persons for career-criminal prosecution. These vary, but generally rely on evidence of prior offenses.

Los Angeles, like most communities, stresses burglary and robbery—troublesome offenses that normally are likely to be subject to plea bargaining even for repeaters. It prosecutes as a career criminal anyone charged with three or more such crimes and anyone previously convicted of either one serious offense, such as armed robbery, or two lesser charges, such as receiving stolen goods. In addition, the unit handles many murders.

Effect in the Bronx

By directing heavy prosecution efforts at a specific crime, some career-criminal units claim to have cut the incidence of that crime quickly. The Bronx initially used its unit, according to director Sheri Roman, to sharply reduce robberies of taxi drivers and fast-food restaurants. Other units emphasize sex crimes, murders or drug trafficking.

A strong argument for the units is that they can obtain long sentences against some criminals who otherwise escape lightly. "Large numbers of people with very serious criminal histories are serving only three months or six months" in jail, largely because of plea bargaining, says Kenneth Conboy, New York's deputy police commissioner.

Two who once got off lightly here were Glenn Alderson and Clyde Stevens. Both had extensive juvenile records and were convicted of robbery and burglary, respectively, shortly after becoming eligible for adult-court prosecution. Yet instead of prison, they drew a few years each in the California Youth Authority, a juvenile institution.

Less than a year after release, they pulled a series of holdups and shot a grocery-store butcher. The career-criminal unit got them convicted of assault and multiple armed robbery. The judge sent Alderson to prison for 12 years and four months, and Stevens for 14 years—both the maximum available sentences.

Mr. Murphy, the prosecutor, tried to get the men locked up even longer for attempted murder, but the charge was rejected. "These guys have a history of violence," he says. "We believe that if you let them out, they'll be at it again."

No Assembly Line

One reason for the success of career-criminal prosecutors is that they work as individual craftsmen instead of assembly-line workers. Ordinarily in most big-city prosecutors' offices, several lawyers each work on a different stage of the case. "Some of these prosecutors don't know a thing about the case until they get into court," says William Turner, a defense attorney in Los Angeles.

"A lot of information gets lost," says Robert Heflin, the chief of the career-criminal unit in Los Angeles. Witnesses disappear. Evidence or criminal histories are misplaced or ignored.

But career-criminal prosecutors follow their defendants from arrest through trial. They work more closely with police and other prosecutors. They are supposed to handle about 15 cases at a time, half the normal load, and they make more-detailed sentencing reports. "This is the way we really should handle all our cases," Mr. Heflin says.

Longer terms for hardened criminals are generally popular, and the federal government, too, is considering adopting career-criminal concepts.

Rudolph Giuliani, an assistant attorney general, talks of

eral laws. Two researchers at the Institute for Law and Social Research say they can predict with 86% accuracy which convicts will be rearrested within five years. The researchers, Charles Wellford and William Rhodes, estimate that 2,000 persons prosecuted each year in federal courts are career criminals.

Sen. Arlen Specter, a Pennsylvania Republican who was Philadelphia's district attorney for eight years, proposes providing federal career-criminal sentences of 15 years to life for anyone found guilty of a robbery or burglary with a handgun on top of two similar convictions. The Reagan administration has endorsed the idea, though some view it as an infringement on state and local responsibilities.

Sen. Specter contends that the threat of speedier sentencing in federal courts to longer terms would spur local judges to tougher sentencing, deter some crime and supplement local efforts against career criminals. "These guys are the central part of violent crime in this country," he says. "I think the federal government ought to take responsibility for helping to prosecute and incarcerate the worst of them."

PRITW/PS - 13

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Can Crime Be Predicted?

*New Report Tells Justice Dept.
How — With 85 Percent Accuracy:
A Score Sheet for Recidivism*

By KATHLEEN SYLVESTER
National Law Journal Staff Reporter

WASHINGTON — Many of the nation's most active lawbreakers are not being prosecuted because law enforcement officials are ignoring ways to identify them, while others are going free because the officials are failing to coordinate enforcement efforts.

Those are the conclusions of two new federally financed studies now under review in the Justice Department.

One of the studies — a copy of which was given to The National Law Journal, but which has not yet been formally released — examines the patterns of so-called "career criminals" and indicates that certain criteria can be used to predict, with 85 percent accuracy, which criminals are likely to be rearrested within five

years. Such information could be used by prosecutors to decide which cases to pursue to cut more effectively into the crime rate.

The second study, which has been released but which has received little attention in the media, analyzes dual-jurisdiction offenses and shows that many criminals go unpunished because they "slip through the cracks" when both federal and local law enforcement officials decline to prosecute them.

Both studies were produced by INSLAW Inc., a Washington, D.C.-based criminal justice research organization, and were commissioned by the Justice Department.

Criminal justice experts say application of the information from the studies could be effective in accomplishing one of the goals of the Reagan administration's Justice Department — reducing street crime — because more criminals could be put behind bars without a substantial increase in spending.

Associate Attorney General Rudolph Giuliani said recently that "If you could just end the cooperation problems [between federal and local officials], you could accomplish more than allocating millions of dollars." In the past,

Continued on page 33

PR [IW] PS - 14

Continued from page 1

"some U.S. attorneys did not function as part of the law enforcement system in their areas . . . That is not the way it should be," he added.

Criminal justice researchers have known for some time that most crimes are committed by a relatively small number of individuals.

• In 1972, Dr. Marvin Wolfgang of the University of Pennsylvania reported that 18 percent of a group of juvenile delinquents accounted for 52 percent of the offenses committed by the group.

• In 1976, INSLAW researcher Kristin Williams analyzed data which showed that 7 percent of the 46,000 defendants handled by the District of Columbia prosecutor's office between 1971 and 1975 accounted for 24 percent of the felonies and serious misdemeanors reported during that time.

• The Justice Department released a study of juvenile crime on Aug. 15 which indicated that youths under the age of 18 account for 40 percent of all arrests for murder, rape, robbery, aggravated assault, burglary, larceny and auto theft.

INSLAW researchers, in a \$290,000 study commissioned by the Justice Department's Office of Legal Policy last year, tried to take the research on career criminals a step further — to identify the criminals who are most

Searching for a Link

They followed a cross-section of 1,700 federal offenders for a period of five years after their release from federal custody. INSLAW was looking for factors that would show a link between what was known about the offenders at the time of their release and the likelihood that they would be arrested again.

INSLAW researchers settled on the following factors as the most likely indicators: prior record (including length of criminal career, number of arrests within five years, longest jail term served and number of prior convictions), youthfulness, a history of drug or alcohol abuse and the nature of the most recent offense. Given greatest weight were violent offenses, property theft, forgeries and drug crimes.

Applying these criteria, 200 of the 1,700 offenders were identified as possible career criminals who could be expected to get in trouble with the law again. During the five-year follow-up, a majority of the 200 — 170, or 85 percent — were rearrested. Half were rearrested within a year, and 69 percent within two years.

As a group, the 200 targeted individuals committed an average of 38 non-drug crimes a year (crimes other than those involving the sale or traf-

1,500 persons in the study were responsible for an average of fewer than four such crimes a year.

The career criminals identified prospectively committed 10 times as many crimes as the rest of the 1,700-member group. And while the recidivism rate for the career criminals was 85 percent, the rate for the others was 36 percent.

A Bigger Dent

The dramatically successful method of prediction indicates that prosecutors have a ready tool to decide more effectively which cases to pursue: by choosing to bring a case against an "identified" career criminal rather than one involving a one-time offender, a bigger dent in the future crime rate would result.

(The study did not address con-

Continued on page 34

PR/IN/PS-15

Electronic Technology Fighting Crime

By DR. FRANK GREENWOOD

Electronic technology is helping make crime a high-risk venture in Maryland through the sharing of state and local criminal information. The state, the courts, and Montgomery, Prince George's and Baltimore counties have integrated their systems to make the criminal records from each available to the others.

Governor Harry Hughes signed the agreements last spring for feeding criminal history information into a common system. The system tracks arrests, cases, defendants, witnesses and other parties through the events in the criminal justice process. It also records the reasons for such discretionary actions as arrest rejections, case postponements and final dispositions.

Accordingly, the information helps:

- Track criminals and criminal cases;
- Produce analysis and special reports on criminal events;
- Reduce paperwork;
- Provide improved information on defendants from the time of arrest to the time of final disposition; and
- Accumulate statistical data for case management and analysis.

One crucial factor in this achievement is cooperation within and among government agencies. For example, some of the people involved are the state's attorneys, the county executives, the county councils, the chiefs of police, the directors of corrections, the sheriffs

offices, court personnel, U.S. Senators and congressmen, and several state legislative subcommittees.

Another critical factor is a software package called PROMIS, the acronym for Prosecutor's Management Information System. Developed by INSLAW, Inc., Washington, D.C., it is designed to:

- Improve case tracking and reporting. It monitors case progress from intake to disposition, including case aging between processing steps and the status of individual cases. Reports can detail case load by activity during specified periods, by assigned attorney, by case type and by outcome.



Dr. Frank Greenwood

- Provide better witness management. All witness contacts are recorded, and witness inquiries can be answered immediately by the case information displayed on the

terminal screens. Subpoenas notifying witnesses to appear and witness "thank you" or disposition letters can be produced automatically.

- Help support decisions. Aggregate data on what is happening in the office can support management decision-making. The chief prosecutor can monitor adherence to policy through reports on reasons for discretionary actions, evaluate the effectiveness of units within the office through disposition reports, and make efficient use of staff resources by reviewing case status and assignment lists.

- Increase office productivity. Data storage and retrieval capabilities reduce manual filing and related space and equipment requirements, while increasing accessibility of information on cases and defendants. Automatic form-production eliminates much repetitive typing. The office can handle an increased case load with existing staff.

Russell E. Hamill, Jr., Montgomery County's assistant chief administrative officer, anticipates that the Montgomery County PROMIS system's booking and jail management components will be added late in 1983. With the local systems fully operational, he observed, Maryland will then have a comprehensive criminal justice information system. Hamill said he believes it will help create an environment that is unprofitable, unattractive and unhealthy for crim-

inals and will help bring into reality the goal of swift and certain justice.

Andrew L. Sonner, state's attorney, expects that the system will provide decision support information such as:

- What is the public cost of going to trial?
- What kinds of evidence does it take to win certain kinds of cases?
- When is it probable that the criminal will get a non-jail disposition?

Intergovernmental cooperation and electronic technology together are helping to increase the effectiveness of Maryland's criminal justice system. Hamill says the new system will reinforce the idea that crime does not pay in Maryland.

Dr. Frank Greenwood, who received his doctorate from the UCLA School of Management, is a member of the faculty of the University of Baltimore.

National Conference
on
The Impact of Criminal Justice Program Initiatives
on Data Requirements and Information Policy

Draft Transcript

Speaker: James Q. Wilson

Final Revisions: 1/3/83

When I speak on information policy and the criminal justice system to an academic audience, it is understood from the beginning, I think, that the first concern of that audience, and therefore presumably my first concern, ought to be the relationship between information policy and civil liberties--that is, the impact on civil liberties of improving, computerizing, or making more comprehensive criminal justice information systems. I do not wish to deny for a moment that this issue is real, but it is not the one about which I plan to speak. I ignore it, not because I am indifferent to the question, but because in my experience, as a practical matter, the threat of information systems to civil liberties, except in certain specialized instances, is remote. It is remote because the problem of information-gathering in the criminal justice system is to get people to gather any information at all. If the amount of time that has been spent arguing over whether the FBI should operate its computer connecting state information systems had been devoted to inducing all members of the criminal justice system who have a need for the information to gather and use that information in an orderly manner, we might in fact have a criminal justice information system and therefore I might now be speaking about its implications for civil liberties.

I do not wish to deny that there have been real gains in the area of information systems since the 1960's. There have been important improvements on crime reports, victim surveys, offender-based transaction systems, and methods for prosecutors to obtain real-time information about cases they are handling. Though

in the order in which the arrest was received. Then with the advent of the career criminal program, we saw the cases being lined up for prosecution in terms of the seriousness of the offense so that armed robbers took priority over shoplifters. Then, because technology was making better information available through such techniques as PROMIS, the prosecutors began lining people up for prosecution on the basis not only of the seriousness of the offense and the strength of the evidence, but also on the basis of the prior felony record of the individual offender. Now prosecutors were putting at the head of the line serious offenders who had a serious rap sheet and against whom there was some reasonable evidence. All well and good. But the question arises, are these criteria really sufficient if we assume that the goal of the criminal justice system is promptly and effectively to dispose of the cases of serious career offenders?

Research that has been done at Rand, at Carnegie-Mellon University, and at INSLAW suggests that present charge and prior felony convictions may not be good predictors of who is a high-rate offender on the street. There may be better criteria to use in deciding who to put at the head of this line waiting to be prosecuted, if your objective is to take the high-rate offenders off the street as early as possible. Among these better criteria (and there is substantial consensus among various research groups) we find the following: (1) age; (2) age at first offense--the younger at which a person began his criminal career, the greater the likelihood he was to be a high-rate offender; (3) drug use, especially heroin combined with other drugs; (4) prior arrest record; (5) employment record. In a moment I'll talk about some of the problems that arise in trying to devise and use improved criteria. Let me now only suggest that if we want to match information systems with the announced desire of the criminal justice system to serve the objective of getting the career criminal off the street as quickly as possible, then

WEST GERMANY'S EMBATTLED DEMOCRACY
JOGGING MANIA—ENOUGH ALREADY!

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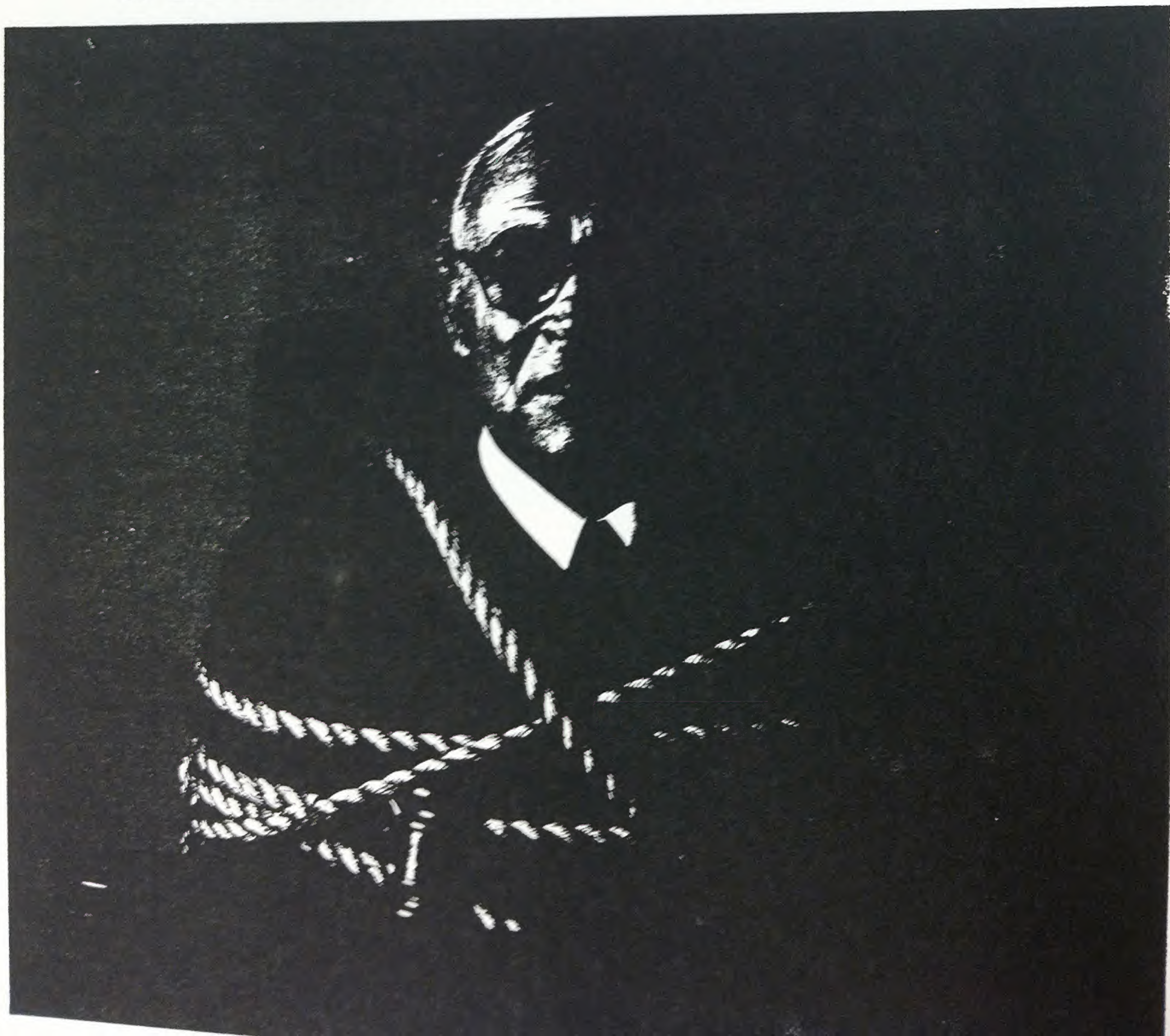
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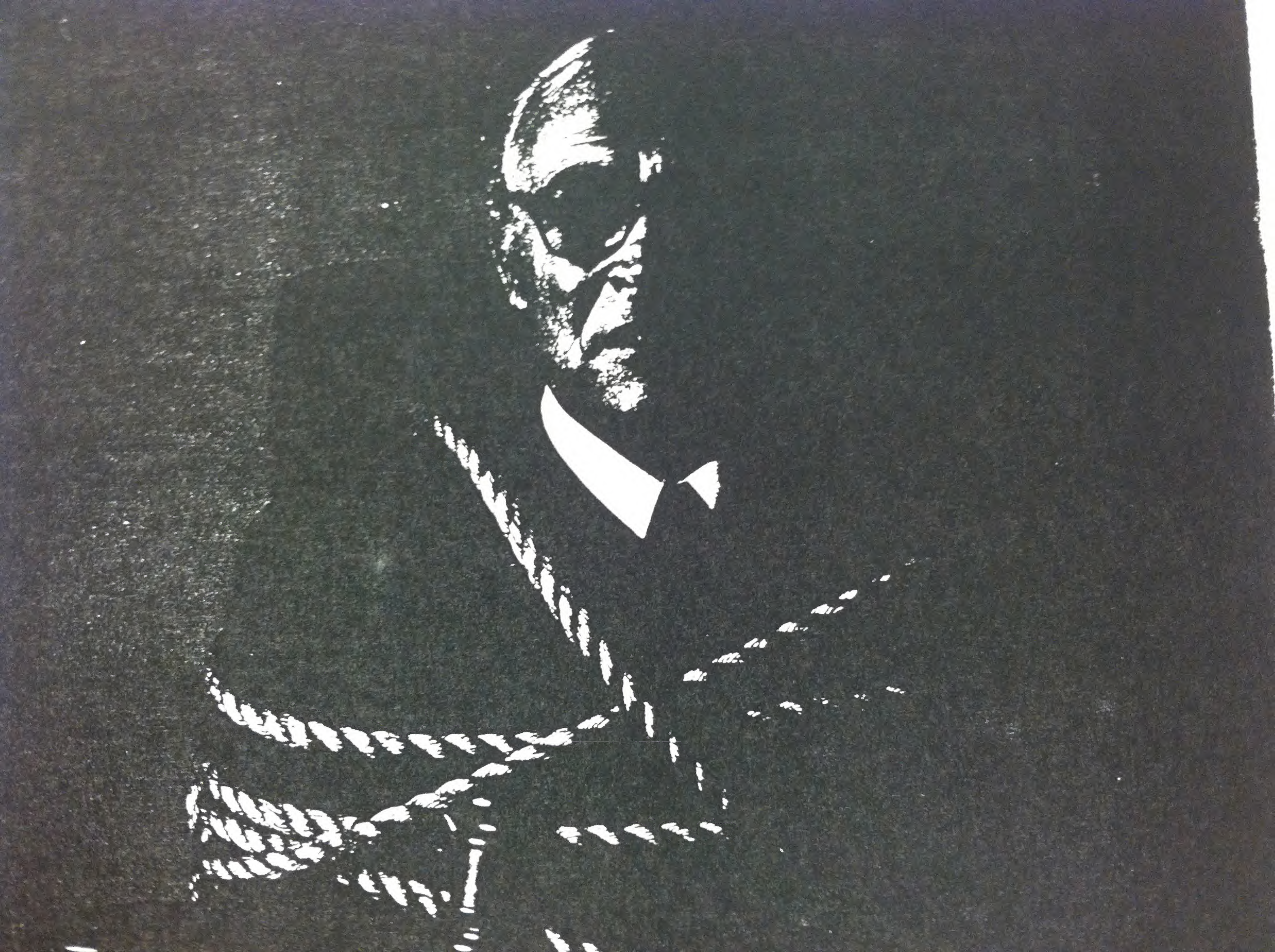
Saturday Review

PR FIN/PS-04

GETTING AWAY WITH MURDER

Our Disastrous Court System





SATURDAY REVIEW: ISSUES

GETTING AWAY WITH MURDER: OUR DISASTROUS COURT SYSTEM

by Nicholas Scoppetta

"Public entertainments in which the climax of the mystery story was the arrest of the guilty party bewildered me because in the real world an arrest rarely ends anything."

—James Q. Wilson
Thinking About Crime

CRIME IS VERY MUCH WITH US. We read about it, talk about it, think about it—and we experience it. Last year, the police made over 240,000 arrests in New York City alone, and four other cities in the United States have higher crime rates than New York has. Complaints reporting crimes were five times that number—but no one knows for sure how many crimes are being committed, since so many go unreported. Besieged by this onslaught of criminal activity, the public has long surmised that governments' attempts to control crime are not terribly effective. These suspicions have, in fact, lately been more than confirmed by objective studies that, fortunately, point the way to much-needed changes in our criminal justice system.

Until a few years ago, we had no way of accurately measuring the performance of that system. But now and for the first time, computer-assisted analysis by the Institute for Law and Social Research (INSLAW) has given us a statistically accurate picture of our criminal justice system and particularly of what happens to people after they have been arrested.

I have worked in criminal justice for some 19 years, during which time I have served as a state and federal prosecutor and more recently as New York City's deputy mayor for criminal justice. Though I had assumed this experience would give me a realistic view of the system's inadequacies, I nonetheless found many of the results of the INSLAW studies surprising.

It didn't surprise me to learn from the INSLAW studies that our criminal justice system is inefficient, costly, and mostly ineffective: in sum, that it doesn't work. But what I didn't expect is the extent to which it doesn't work in cities across the country.

The People v. Charles Yukl



In 1966, Charles Yukl strangled Susan Reynolds and mutilated her body. Pleading guilty to manslaughter, he was sentenced to from seven and a half to fifteen years in jail. In June 1973, he was released on parole. During the following summer, he lured Karin Schlegel to his Greenwich Village apartment and strangled her. Jailed for this crime, Yukl will be eligible in fifteen years for parole consideration.

The studies show that most defendants arrested for serious crimes will go free. In more than half the cases, the prosecutor will simply drop the charges. In another significant percentage, the defendant will plead guilty to a lesser charge and will receive a suspended sentence, although occasionally his guilty plea will earn him a short jail term. Most of the remaining cases will be referred to such "diversion" projects as drug rehabilitation centers, "work" programs, or other social agencies. In a few instances, the defendant will actually be tried for the crime he was arrested for, and of those tried, even fewer will be jailed. However, in the very

act of documenting the system's considerable shortcomings, INSLAW is also providing us with the outlines of a program for reform.

Under the auspices of INSLAW, many prosecutors' offices across the country have computerized their record-keeping systems. Designed primarily to help these attorneys manage their personnel and resources more efficiently, the Prosecutors Management Information System, known by the acronym PROMIS, is also proving to be a boon to analysts of the criminal justice system. For the first time, all of the myriad details of the criminal justice process are easily retrievable for examination and evaluation.

Perhaps the most alarming revelation to emerge from the analyses is the astonishingly high number of cases that are dismissed outright by prosecutors. For example, during the first six months of 1977, more than half of all persons arrested in Los Angeles for felonies had the charges against them dismissed. During the same time period, New Orleans dismissed about 6 out of every 10 felony arrests; and Salt Lake City and Washington, D.C., dismissed about 5 out of every 10. In New York City, dismissals occur in about 4 out of every 10 felony arrests.

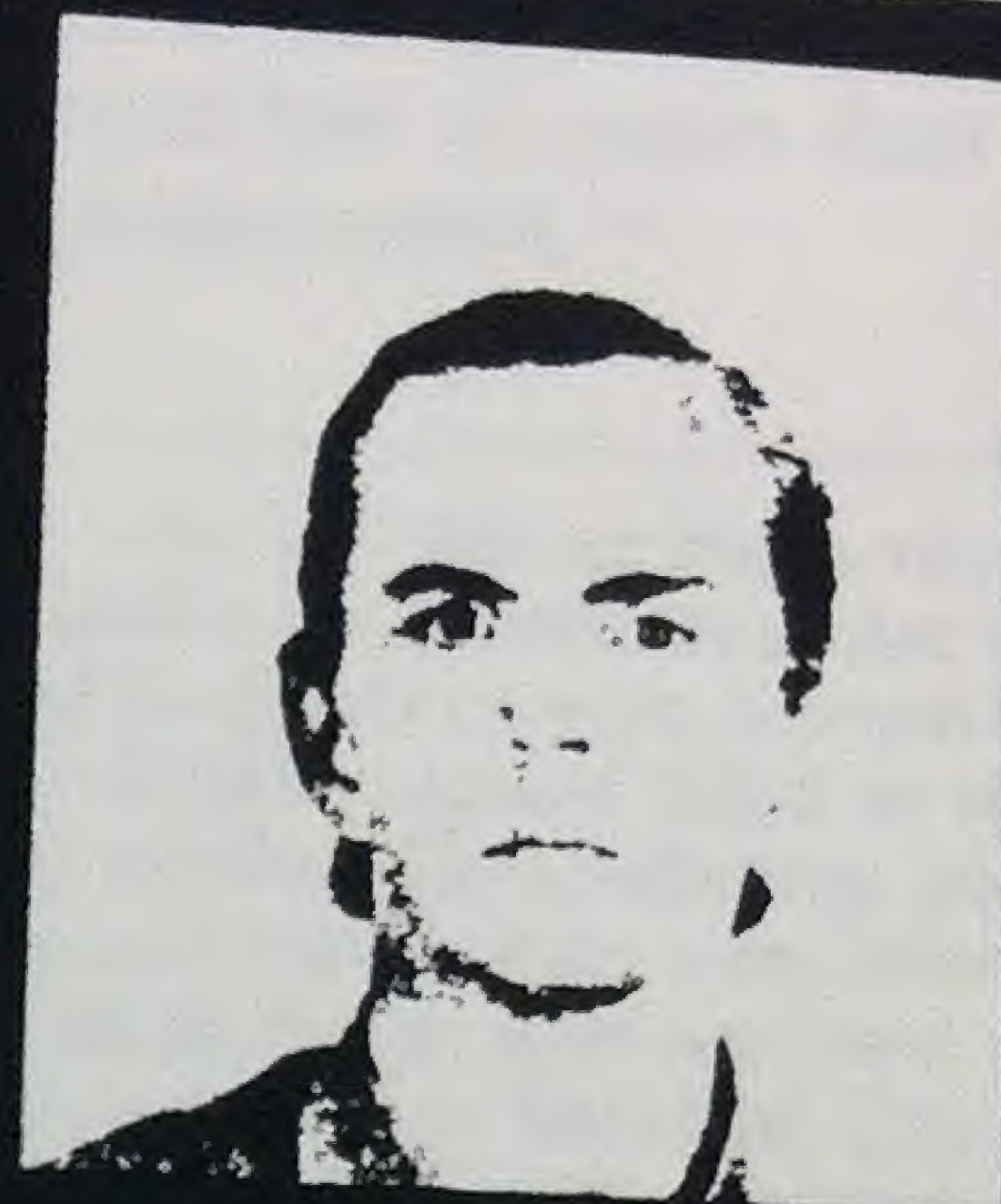
Through PROMIS and systems like it, INSLAW has been able to identify some of the reasons for these high dismissal rates: Often, sloppy police work results in a failure to record accurately witnesses' names and addresses or to recover physical evidence properly. Then too, witnesses fail to appear—some because they are reluctant to become involved and others simply because they have not been properly notified. And due process considerations, such as unlawful searches or improperly obtained admissions, frequently cause cases to be dismissed "on a technicality."

However, most of the cases being dismissed are those that most prosecutors feel don't belong in the criminal court in the first place and in which there is usually some interpersonal relationship between the victims and the defendants—husbands and wives, landlords and tenants, prostitutes and pimps, store owners and customers, and lovers, neighbors, or in-laws—in short, people who knew each other or who came together in some transaction in the course of which the crime was committed. In these situations, there are often extenuating circumstances that have a considerable effect on the cases' disposition in court.

Take the case of a customer who finds that his local dry cleaner is unable to locate his suit. An argument breaks out, and the customer pushes the store owner, who pushes back and in the ensuing struggle crashes against a glass showcase, shattering it and cutting his hand. The police are called, and the customer is arrested and charged with assault as well as with a variety of lesser charges stemming from the damage done to the showcase.

By the time the case gets to court and is ready for a hearing, tempers will have cooled. Likewise, time lost from work while waiting in court for the case to be called will further dampen the complainant's ardor. In all likelihood, he will have no interest in seeing the person he is accusing jailed or tried on criminal charges. He simply will want his showcase repaired and his doctor bill paid. Eventually, an assistant prosecutor will find the time to evaluate the case and question the store owner. The attorney will quickly realize he has a witness who wants nothing more to do with this matter and who is reluctant to come back to court "one more time" on the off chance a trial can be held that may result in a conviction but that will in all likelihood produce no payment for damages. Typically, the prosecutor will then allow the complainant to withdraw the charges, and the case will be dismissed. The customer may or may not have his lost suit returned, and the store owner will have to pay for the

The People v. Joseph Bernard Morse



When he was eighteen, Joseph Bernard Morse picked up a large rock and bashed in his mother's head. Then he beat his invalid sister to death with a baseball bat. All this happened in San Diego, in 1962.

In 1964, while he was serving a life sentence for killing his mother, Morse murdered a fellow inmate by strangling him with a garrote improvised from twine. For this murder, Morse was given a second life sentence.

Last year, after many sessions with Morse, a psychological tester concluded that the prisoner's potential for violence was low, *provided everything was going his way*. More recently, a psychiatrist reported that Morse is "antisocial" but that he should nevertheless be paroled and watched to see what happens.

As things stand, Morse will be paroled next year.

damage himself. Not only has valuable court time been taken up needlessly but both parties leave frustrated, angry, and disillusioned with the system.

Cases like these, where there is no prior intent to commit a crime, do not ordinarily lend themselves to successful criminal prosecution and almost always end up in a dismissal or in a plea to a much lesser charge with a suspended sentence. Yet they account for approximately half of the volume of arrests and come into the courts at a staggering cost to the system in terms of police, prosecutor, and court time, all of which are diverted from the truly serious criminal cases.

Almost all the actual convictions come about as a result of plea-bargaining. By this process, a direct result of the enormous volume of cases pouring into the criminal justice system, a defendant pleads guilty to a crime less serious than the one charged in exchange for a more lenient sentence, thereby enabling prosecutors to dispose of tens of thousands of cases that they have neither the resources nor the time to try. Of the more than 100,000 felony arrests made each year in New York City, only slightly more than 3,000 of them are tried to verdict by a court and jury. The other 97,000 or more cases either are dismissed, diverted for some noncriminal disposition, or disposed of through plea-bargaining. Furthermore, of all the defendants convicted of felonies, either through trials or pleas, less than 4,000 are likely to go to state prison on sentences of one year or more, and most of these defendants are likely to be back on the streets in short order. The average time actually served in state prison is less than 26 months.

The net result of this processing of great numbers of persons by the police, courts, and prosecutors is a continual

"Perhaps the most alarming revelation to emerge from the analyses is the astonishingly high number of cases that are dismissed outright by prosecutors."

recycling of the criminal population, with little or no effect on them or on the crime rate.

Repeat offenders account for an extraordinary number of reported crimes. One INSLAW study dealt with 45,575 persons arrested in Washington, D.C., for serious crimes committed over a 56-month period. The study found that among 7 percent of these defendants, each had been arrested four or more times, which accounted for 24 percent of all arrests made during the period.

Reports are replete with examples of the system's failure to deal with the repeat offender. In one instance I know of, a burglary suspect was arrested and freed on bail 11 times in 17 months without standing trial; in another, a suspected thief and forger was arrested and freed on bail 17 times in 30 months without once being tried. In one jurisdiction, 10 persons committed in less than one year 274 crimes—including 200 burglaries, 60 rapes, and 14 murders. In New York State, analysts have concluded that 80 percent of all solved crimes are committed by recidivists.

That this revolving door syndrome is doing little to control crime is to state the obvious. What effective reforms can be instituted, however, is not so obvious. The traditional response of most elected officials to rising crime rates is to call for more police to make more arrests and for more prosecutors and judges to try those arrested. Though more resources may help, studies by INSLAW and other groups have raised serious questions as to just how effectively we use the considerable resources now devoted to fighting crime. The often-quoted Kansas City Preventive Patrol Experiment, conducted by the Police Foundation, in 1976, came to the conclusion that preventive patrol—that is, police officers' showing their presence on foot patrol or in marked cars to prevent crimes—has little or no effect on reported crime or on the ability of the police to apprehend wrongdoers.

A closer look at the productivity of the individual police officer is also in order. An examination of all arrests made by Washington, D.C., police officers in 1974 shows that only 15 percent of the arresting officers accounted for half of all arrests leading to convictions. Finding out what these extraordinarily effective police officers are doing that the other 85 percent are not might lead to a decrease in the 70-percent dismissal rate for serious crimes that Washington experienced that year.

When one also examines productivity in the courts, one finds similarly depressing statistics. In 1976, the Economic Development Council (EDC) of New York City released a study of how court time was being utilized to prosecute felonies in two of the busiest counties in New York. What emerged was a picture of wasteful underutilization of court time—a picture that was an indictment more of the entire criminal justice system than of the courts and the court administrators. While it is true that EDC's analysts found that the average time judges were spending on the bench in court was three hours and three minutes each day, it was also determined that these same judges were forced to waste an hour and 14 minutes each day because of poor administration in other parts of the system.*

Judges were kept idle as they waited for defendants to be brought before them from detention facilities; witnesses either failed to appear or were not notified that they were due in court; defense counsel failed to show up, alleging that they had conflicts in scheduling; police officers were unavailable; and prosecutors were often not prepared to proceed. In short, for at least one hour and 14 minutes a day, supreme court time in New York City was being lost because of inefficient system-wide planning and administration, at an enormous cost to the public. EDC's analysts calculated that a single hour of supreme court time, city-wide, represents a cost of \$21.5 million. That's enough to pay for an additional 37 courtrooms, fully staffed. Occasionally, exceptional judges such as Harold Rothwax [see page 14] are able to overcome the system's lack of coordination. But the system cannot of course be premised on the availability of large numbers of such gifted judges.

FORTUNATELY, THERE IS A POSITIVE SIDE to the unhappy picture of law enforcement emerging from these studies: In the very act of identifying the system's shortcomings for the first time, the studies also provide the basis and impetus for real reforms. Because of their broad-based, objective, computer-analyzed findings, the INSLAW studies in particular leave little room for administrators to do anything but implement change.

Any attempts at reform should begin with the recognition that the criminal justice system *rarely functions as a system*: Police, prosecutors, courts, and other components of the "system" often seek to advance their own interests, without regard for the effects on the other areas of law enforcement. Thus, the police argue for more resources without regard for the fact that the courts are being overwhelmed by the number of arrests already being made; the probation services are being cut to reduce budget costs, and the cuts hold up the delivery of probation presentence reports, which unnecessarily detains prisoners in expensive presentence facilities; and fully staffed courtrooms are meanwhile kept idle because efficient system-wide procedures do not exist. The fact is that a criminal prosecution must be viewed as a continuum that involves a victim and a defendant interacting with police, prosecutor, defense counsel, court, and prison officials and with probation and parole personnel.

It is also essential that *system-wide budgeting* be done. The annual competition for funds that now goes on among criminal justice agencies in most cities results in an inequitable distribution of scarce resources.

Clearly, for a criminal justice system to be effective, it must be viewed in its entirety, with due regard for system-wide planning and coordination. For this reason, every large city should have a criminal justice coordinator's office similar to the office now functioning in New York City. The coordinator should be of sufficiently high rank in the administration (in

*The EDC report suggests that a productive court day includes approximately five hours on-bench time. This figure recognizes that many out-of-court duties, such as reading motion papers, writing reports and opinions, and doing research, make demands on a judge's time.

The People v. Joseph Holloway



In 1971, on the East Side of Manhattan, Joseph Holloway held up at knifepoint a seventy-one-year-old banker and his wife. Jailed for this crime, Holloway broke down and confessed to a rape-burglary, and on August 8, 1972, he was given concurrent sentences of from 4 to 12 years for these crimes. Enrolled in a work-release program in 1975, he promptly committed two armed robberies, and when he was paroled in January 1976, he committed within the space of three months four more armed robberies—two of them involving sexual abuse of his victims. The police finally ended his spree by catching up with him in March 1976, and in 1977 he was given a sentence of from 10 to 21 years. Because of a legal technicality his sentence will be completed by 1981.

New York, the position is filled by a deputy mayor) to deal appropriately with all of the principals in criminal justice.

Every city with a significant volume of criminal cases should install a management information system such as INSLAW's PROMIS. This is essential if local law enforcement agencies are to manage their resources properly. Such systems not only identify inefficient operations but also provide the basis for correcting them. Likewise they provide the basis for a rational ordering of priorities for police, prosecutors, and courts.

Using programs such as PROMIS, a concentrated effort should be made to focus the full force of the criminal justice system on the repeat offender. As the INSLAW studies mentioned above demonstrate abundantly, a relatively small percentage of defendants account for a disproportionate number of arrests. Computer record-keeping systems can identify the chronic offender. Once this is done, he or she should be singled out for special attention. At the same time, less serious cases, such as those in which there is an interpersonal relationship between the parties, should be diverted from the criminal courts and treated administratively. Using lay arbitrators, dispute centers such as those now operating in New York and elsewhere can mediate among the disputants in these cases. This practice will result in a saving of the valuable time and resources of the court system while concurrently providing a forum in which the parties may reach a meaningful resolution. Armed with the authority to file civil court money judgments, these centers can often provide the remedy the parties really seek.

Finally, some of the fundamental premises upon which the system is built are in serious need of reform. The present indeterminate-sentencing structure that exists in most states

is based on the dubious premise that large numbers of defendants are rehabilitated while they are in prison. Thus, in New York State a judge is empowered to set an indeterminate sentence of from 1 to 15 years. The parole board may release the defendant anytime after he has served one year—presumably when he is rehabilitated or when he is "cured" of his antisocial behavior. This process has resulted in short prison terms and not many cures: As noted above, in New York State the average time served in state prison is less than 26 months, and recidivists are responsible for 80 percent of solved crimes.

Indeterminate sentences should be scrapped, then, in favor of a more realistic sentencing structure such as that proposed for the federal courts in a bill now pending before Congress. A commission that would set definite sentences within narrowly prescribed limits and within legislatively established maximums should be established. Thus, for example, an armed robbery might still have a legislatively prescribed maximum sentence of 25 years, with a definite or "presumed" sentence of from 6 to 8 years set by the commission. Under this system, the court could go above or below the presumed sentence but would have to state its reasons for doing so. Any punishment above the presumed sentence could be appealed by the defendant, and any below, by the prosecutor. Parole as it now exists would be abolished, except that it might be retained as an adjunct to the trial court's stipulation, for instance, of a sentence of six years, with two on parole. This structure has appeal in that it would provide specific guidance for trial courts while preserving court discretion for the exceptional case. It would also place sentencing responsibility squarely with the courts, where it belongs. An appellate court, rather than the parole board, would thus act as the balance wheel of the system.

Other reforms are badly needed. In jurisdictions across the country, judges are too often selected primarily on the strength of political considerations, with little regard paid to legal scholarship and abilities. In most states, mechanisms for disciplining or removing inept judges are either nonexistent or so cumbersome or expensive to initiate that they are rarely used.

Case processing must be made more efficient so that we can reduce the time it takes to bring an arrested person to trial. The system should strive for swift and certain punishment as a likely deterrent to crime. We must better manage and coordinate the court system toward this end so as to increase trial capacity and to reduce the necessity for prosecutors to rely so heavily on plea-bargaining.

The most important reform we can initiate, however, is a change in the perspective we bring to the control and prosecution of crime. We must learn what *really* works and discard those notions we have about what *ought* to work.

The control and reduction of crime in urban America have proved to be elusive goals. The criminal defendant is after all the end product of our social and economic ills. Given the complexities of the causes of crime, it is undoubtedly true that the public's expectations of law enforcement's role in achieving these goals are unreasonably high. Still, it is plain that the system performs far below its potential and that a frightened and much put-upon public has a right to demand more effective law enforcement than it is getting. We in America have lived for so long with pervasive crime as a fact of life that perhaps we have ceased to believe it can be otherwise. An efficient and effective law enforcement system would go a long way toward restoring that belief. ●

Nicholas Scoppetta is the former deputy mayor for criminal justice and commissioner of investigation for the city of New York.

MONDAY, DECEMBER 25, 1978

B1

PRIN/PS-05

City Judges' Sentences Vary Widely

Study Recommends Greater Conformity, Sets Out Guidelines

By James Lardner

Washington Post Staff Writer

A federally sponsored study released yesterday found widely different sentencing practices among District of Columbia judges and recommended a number of guidelines to encourage, but not require, greater conformity.

One D.C. Superior Court judge, for example, incarcerated 87 percent of the convicted felons and another judge sent only 29 percent to jail during a comparable period, the study revealed.

Commissioned by the U.S. Law Enforcement Assistance Administration, the study said that variations in sentencing practices were sometimes hard to explain. The researchers attempted to develop a formula for predicting sentences based on the defendant's background, the particular law violated and the judge's past sentencing pattern, but they found the formula worked only about 60 percent of the time, the study said.

"The judges just don't know what the other judges do with similar cases," said William Hamilton, president of the Institute for Law and Social Research (INSLAW), the government-subsidized group that surveyed the sentences of 1,665 adult felons arrested in 1974.

Hamilton said he does not believe that Superior Court sentencing practices have changed substantially in the last four years. U.S. Attorney Earl Silbert said he had not yet read the study.

The study divided sentences into two broad categories of "in" (incarceration for any period whether in an adult or youth offender facility) and "out" (fine, probation or suspended sentence).

Judges' Sentences Vary Widely

Study Calls for Conformity

FELONS, From B1

Hamilton said the INSLAW report should not necessarily be taken as a call for tougher sentences. "But it's clearly wrong that they lack even-handedness," he said. Judges at the opposite ends of the sentencing spectrum "can't both be right," he said.

The study said that some of the differences among the 38 judges whose sentencing practices were surveyed could be attributed to variations in the seriousness of the cases that came before them. But judicial philosophy also appeared to be a significant factor, according to Terence Dungworth, the criminologist who directed the study.

Felony sentencing provisions here, which allow judges wide latitude, are scattered throughout the D.C. and U.S. criminal codes, and "have not undergone major revision for more than 30 years," according to the INSLAW study.

Nevertheless, Hamilton said, judges in the middle of the sentencing spectrum appear to have developed some

"common sense" rules.

The report suggests that the best way to reduce variations in the sentencing of comparable defendants may simply be to provide judges with more information. Under current court procedures, a probation officer prepares a presentence report on each defendant, dealing mostly with the defendant's history, dangerousness and prospects for rehabilitation.

The INSLAW report proposes a new form of presentence report that would include a "historical sentencing profile" of what the court has done with comparable defendants convicted of the same offenses.

One finding that surprised law enforcement officials, according to Hamilton, was the large number of defendants—58 percent—given "out" sentences for the crime of assault on a police officer. Prosecutors told the INSLAW team that only "infinitesimally small" proportions of these cases were prosecuted as such; the rest were generally broken down to simple assault or another lesser offense.

THE NEW YORK TIMES, MONDAY, DECEMBER 25, 1978

Sentencing Study Shows Wide Variation in Capital

WASHINGTON, Dec. 24 (UPI) — A study of this city's sentencing practices shows wide variation in imposing penalties for serious offenses, resulting in the release of some felons.

The study of the Washington D.C. Court system, prepared by the Institute for Law and Social Research and made public today, reported that more than a third of the adults surveyed who were convicted of offenses involving a weapon were given probation or a suspended sentence.

Only in felony homicides and first-degree murder was a relatively high degree of sentencing uniformity found.

"Revolving Door" Justice

WHY CRIMINALS GO FREE

THE WASHINGTON "STING" —AND WHAT IT REVEALED

Police in Washington, D.C., gave a "party" recently. When it was over, the guests were not happy, because they were all under arrest.

The party, it turned out, was the last stage of a ruse by police and federal agents to trap local burglars and thieves. For weeks, police using such phony names as "Rico Rigatone" and "Angelo Lasagna" had posed as Mafia mobsters "fencing" stolen goods. They dubbed their operation "The Sting," after a movie based on a somewhat similar ruse.

Business was brisk. Police, paying good prices, took in some 2.4 million dollars' worth of loot. They secretly photographed each transaction. Then they invited their "clients" to a party in appreciation for their business. Nearly 100 who showed up were arrested on the spot. Other "clients" who did not show up were arrested later. Some are still sought.

For the police, it was a triumph. But for the public, there were some disturbing statistics that came out of the operation.

Here, for example, is what was found out about the criminals stung by the Washington "Sting": Of the 152 so far arrested, 105 were discovered to be roaming free on parole or probation for a previous offense, or on some form of pretrial release, such as bail, on pending charges. And 114, or about 70 per cent, had prior criminal records.

Also disturbing was what happened to the entrapped thieves: At least 59 have been set free on bond or some other form of release pending disposition of their cases—19 of them with no cash bond required. One of those set free was a self-styled "hit man"—a killer for hire—who gave police a resumé of his "experience" in hopes of getting a job with the Mafia. He was released on \$1,000 bond.

Of the defendants released after their arrest, at least 11 have since been rearrested on new charges.

It is statistics such as these that have led many people to complain that the U.S. has a "revolving door" system of criminal justice.

Is this a true picture, nationwide? If so, why?

For answers, *U.S. News & World Report* undertook a study to find out what actually happens to arrested criminals and how so many of them manage to stay out of prison or jail. With the aid of the Institute for Law and Social Research of Washington, D.C., the study was made by Patrick R. Oster, a lawyer and an Associate Editor of this magazine. From the findings, Mr. Oster and Assistant Managing Editor Donald P. Doane produced the special report on America's criminal-justice system which begins in the next column.

Americans, for years, have been frightened by the constant rise in crime. Now, along with that fear, is a growing anger. The anger is about the way the nation's system of criminal justice handles criminals.

Almost everywhere you go, you hear people complain: Criminals arrested one day are often back on the street the next day, committing new crimes even before they can be tried for their past crimes. Many arrested as criminals are never brought to trial. When tried, relatively few are convicted. Even when convicted, few are sent to prison.

Almost every day, in their local newspaper, people read about a crime being committed by someone with a long criminal record, who has been arrested time after time and then, each time, soon set free.

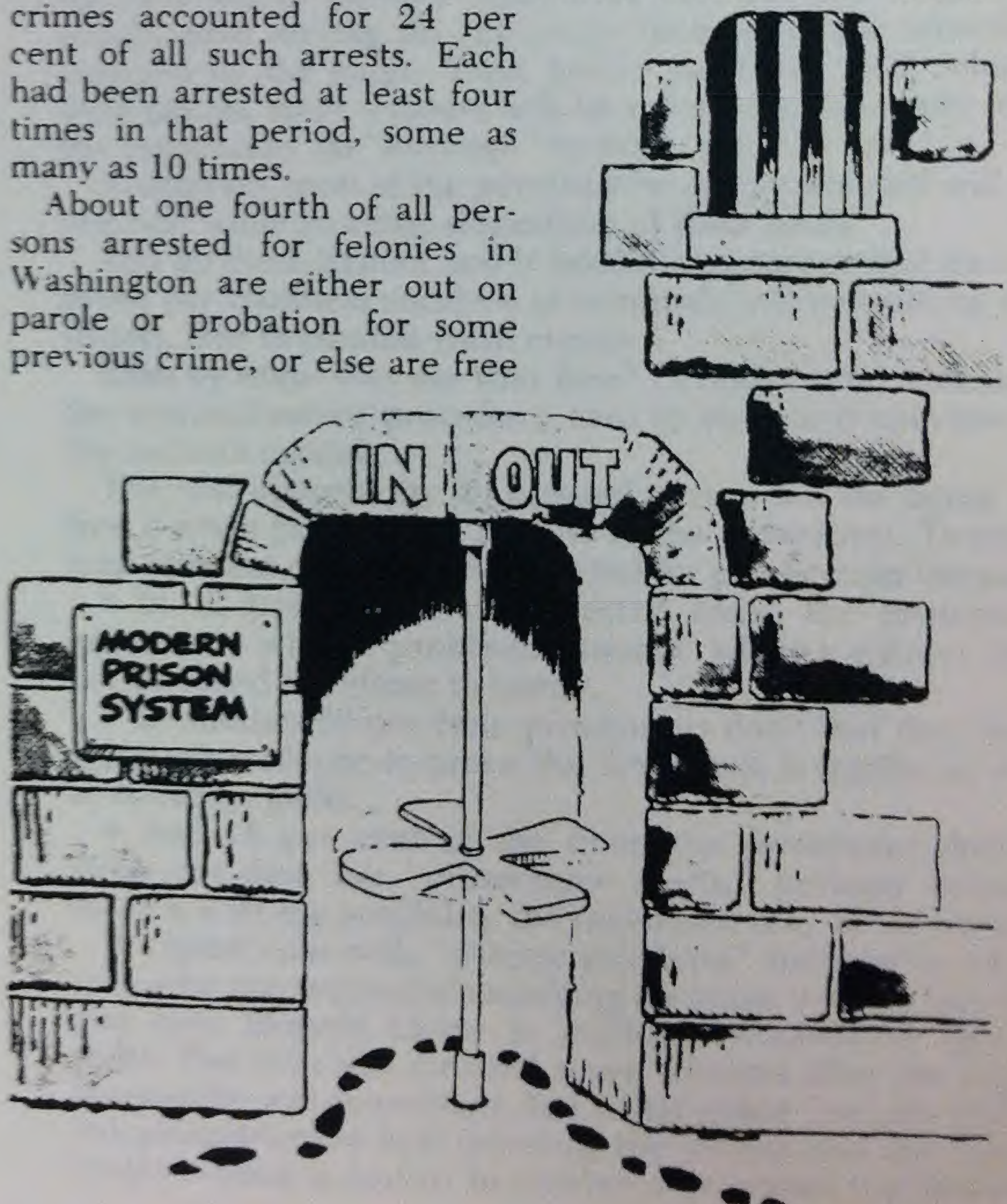
To people it seems that criminals move in and out of the criminal-justice system as though it had a revolving door.

A look at the capital. As a sample of what angers people, take a look at what happens to criminals in Washington, D.C.

In the nation's capital, 2 out of 3 persons arrested for serious crimes are not convicted. Of the one third who are convicted, only a little more than half spend any time in jail or prison. And, if they are convicted of two separate crimes, one right after the other, the chances are their sentences will be set to run concurrently. In effect, they commit their second crime "for free."

Six out of 10 persons who are arrested for felonies in Washington have prior criminal records. Between 1971 and 1975, a mere 7 per cent of all those arrested for serious crimes accounted for 24 per cent of all such arrests. Each had been arrested at least four times in that period, some as many as 10 times.

About one fourth of all persons arrested for felonies in Washington are either out on parole or probation for some previous crime, or else are free



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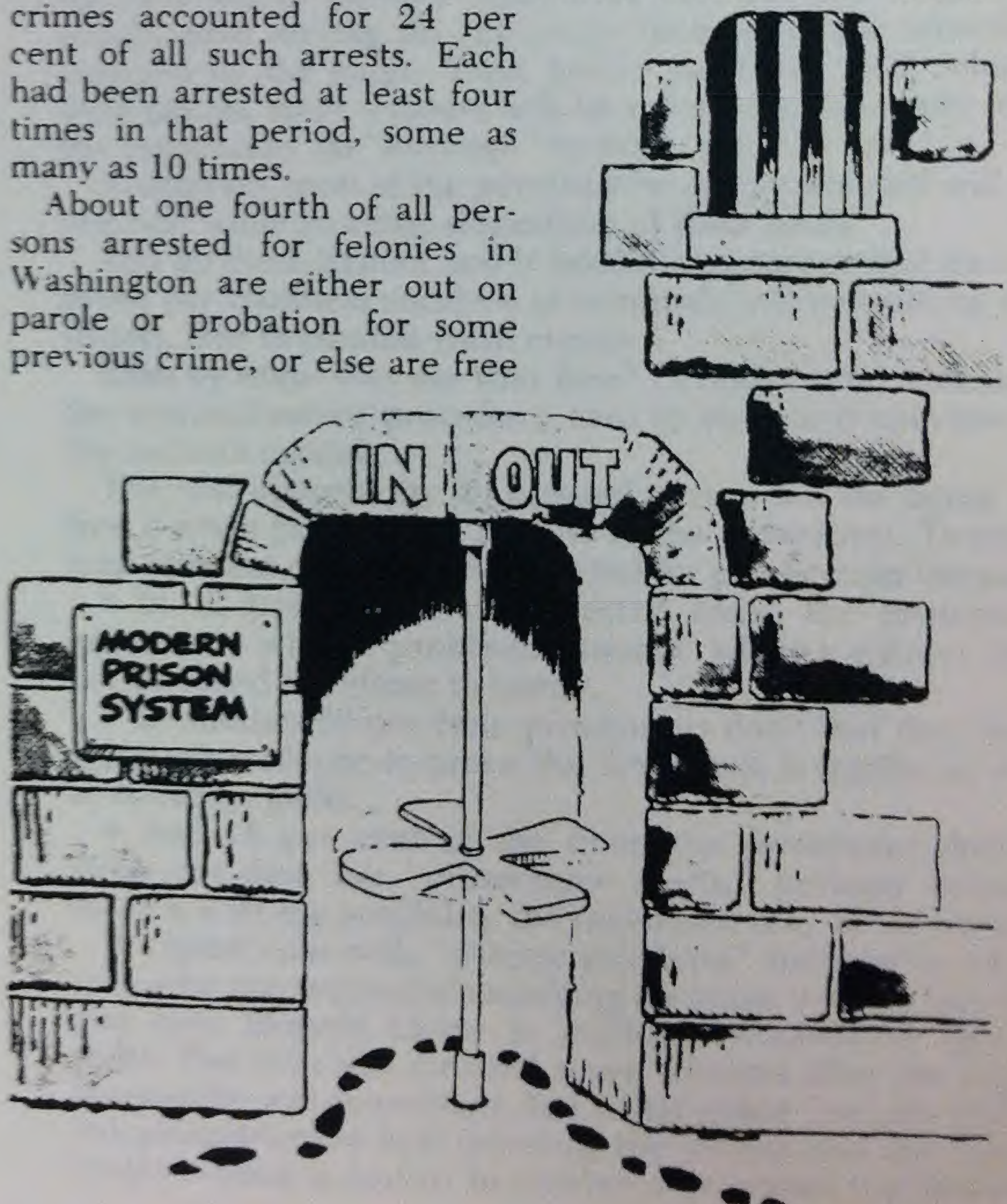
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on some form of pretrial release on a pending charge. More details of the Washington record are set out in the chart on page 39.

Appalling as they are, these figures do not mean that Washington has an unusually bad system of criminal justice. In fact, official figures indicate that Washington does about an average job of prosecuting and punishing criminals. How closely it compares with some other large American cities is shown in the chart on this page. This means that what happens in the nation's capital is typical of what happens in major cities all across the country. So Washington was chosen by *U.S. News & World Report* as the subject of an intensive study to see how and why so many criminals go free.

One case found in this study illustrates how rapidly a criminal can go in and out of the "revolving door" of criminal justice. The man has been arrested at least seven times. Here is his record for just last year:

On May 25, 1975, he was arrested for robbery at gun point. While free on bond, he was arrested on July 22 for illegal possession of a gun. Again he was released, this time without bond. The next day he was arrested on a charge of petty larceny. The charge was reduced to attempted petty larceny, and he was released without bond.

On July 31, this man was rearrested for armed robbery. This time, bond of \$2,000 was required. He made the bond and was released. On October 9, while still out on bond, he was arrested again—for armed robbery. On November 20, his gun-carrying charge was dropped by the prosecutor. On December 4, he was arrested for "unauthorized use" of an automobile. But that charge was also dropped. On January 26 of this year, the man finally pleaded guilty to the attempted-petty-larceny charge of last July 23, and was released to await his sentencing.

Some other glaring examples of "revolving door" justice in Washington are related on page 40.

The underlying problem. Talk to police in any major city and they will cite similar cases. These cases represent the extremes—not the rule. But they point up the underlying problem that weakens all U.S. systems of criminal justice—the inability to keep known criminals off the streets.

Who's to blame for this? Study official records, talk to police, prosecutors and other authorities, and you find there is not just one culprit. Many are to blame.

Police, for example, make some bad arrests, frequently fail to come up with hard evidence or reliable witnesses. And, nationwide, police are able to make arrests in only about 1 of 5 serious crimes reported. Prosecutors, often overburdened, drop some cases that might have been won.

Favorite targets of public criticism are the judges. They are accused of being "too lenient." Some undoubtedly are. But, in the over-all picture, they play a relatively small role in letting criminals go free. In Washington, for example, only 1 arrested criminal in 3 ever comes before a judge for sentencing. Parole boards, another popular target, frequently turn dangerous prisoners loose on society. The high crime rate among parolees shows that.

Even the American public itself must share a portion of the blame, because so many citizens refuse to "become involved" by testifying. A high percentage of prosecutions fail for lack of co-operative witnesses.

Washington's record. A close look at the record of Washington, D.C., reveals how the criminal-justice system works—or doesn't work.

To begin with, you find that most criminals are never caught. For example, arrests are made in only 1 out of 4 reported robberies. So, only a small fraction of all crimes committed ever reach the criminal-justice system at all.

Starting with those who are arrested, you find only 33 out of 100 will eventually be convicted of any crime. The

Few People Arrested Go to Prison—

THE RECORD IN 6 CITIES

Based on latest figures available in six large cities or metropolitan counties:

Of All Persons Arrested on Felony Charges—

	Convicted	Sent to Jail or to Prison
Washington, D.C.	33%	18%
Chicago	26%	15%
Baltimore	44%	28%
Detroit	58%	20%
Los Angeles County	46%	28%
San Diego County	34%	14%

Source: Institute for Law and Social Research, "Felony Justice" to be published this fall by Little Brown & Company. California Bureau of Criminal Statistics

attrition among the ranks of the arrestees begins early. Typically, for a variety of reasons, the prosecutor declines to prosecute 24 out of 100 cases that the police bring in. An additional 40 cases out of the original 100 will be dropped later by the prosecutor or dismissed by a judge. Only 10 cases will go to trial. About 26 defendants will plead guilty to some charge—sometimes a lesser charge than that on which they were originally arrested. Out of the original 100 arrested, only 3 will go free because of an acquittal at trial. The other 7 who stand trial will be convicted.

Of those who are convicted, about 4 in 10 will not be sentenced to jail or prison. Instead, they will be fined or placed on probation. Of the 6 in 10 who are incarcerated, 2 out of 3 will be paroled when they first become eligible—usually after serving the minimum time set in the sentence imposed by the judge. Even before parole or final release from prison, many inmates will be released temporarily into the community on "furlough" to work, study or visit.

In addition, most of the persons who are prosecuted will be released while awaiting disposition of their cases.

Add up these figures, and it becomes apparent that on any given day countless numbers of criminals will be walking the streets, free to commit fresh crimes.

Step by step. Why are they free? To understand that, take the criminal-justice procedure, step by step, as it operates in the nation's capital.

The first opportunity an accused person has for being set free is when police bring his case to the prosecutor. Twenty-four cases out of 100 will be rejected for prosecution because:

- In 32 per cent of the rejected cases, the prosecutor encounters witness problems—usually when a witness cannot be found or refuses to testify.

- In another 32 per cent, prosecutors don't feel they have sufficient evidence to prove the defendant is legally, as well as factually, guilty.

- And 18 per cent of the time, the prosecutor doesn't think the case has "prosecutive merit," perhaps because there is a strong possibility the defendant may be innocent.

A typical case with "witness problems" involved a young man who was accused of assaulting a woman with the use of a gun near Dupont Circle in midtown Washington late at night. The man was arrested seven minutes after the crime supposedly was committed. But when police brought him to the prosecutor the next morning, the woman said she was no longer willing to testify. In another case, a man was arrested

WHY CRIMINALS GO FREE

[continued from preceding page]

for robbery. The victim said he was unable to identify the suspect, so the prosecutor rejected the case.

A man accused of rape was let go because the prosecutor decided the woman's story was not believable.

"A case is only as good as the evidence," says Robert Shuker, chief of the Superior Court division of the U.S. Attorney's office, which is D.C.'s local prosecutor. "I've got to have proof. If I don't, I have no moral right to go forward with the case. And if we haven't got enough evidence to start with, it'll be a miracle if we get more, because we have no investigators."

A defendant has a second chance to go free—though only temporarily—at the arraignment hearing when bond or some other form of pretrial release may be granted.

Long-standing concern about Washington's bail policies has intensified in recent months because of several sensational cases. In one case, an 86-year-old woman was hit on the head in a street robbery and died. Two of her alleged assailants were released without bond. A third, at the time of the attack, was free on bond on another robbery charge.

Not long before the robbery-killing, an Amtrak employee was stabbed to death on a bridge crossing Washington's Rock Creek Park. His alleged killer was released the next day without having to post any bond.

Bail law cited. "The principal reason for releases such as these is the D.C. bail law," says William Hamilton, president of the Institute for Law and Social Research (INSLAW), a Washington organization that aided *U.S. News & World Report* in its study of the capital's criminal-justice system.

The District's bail law prohibits judges from setting a high money bond for the purpose of keeping a defendant in jail "to assure the safety of any person or the community," even though the defendant's record shows him to be a dangerous person. The judge can only consider whether the defendant is likely to flee before trial. If a person has "strong community ties," it is usually presumed he will not flee. As a result, 37 out of 100 persons considered for release pending trial will be set free without bond; 31 will be freed under some type of money bond; 14 will be released in the custody of some other person. Even among those accused of such serious crimes as

murder, robbery and rape, about 1 in 3 will be released without posting a money bond.

Washington has a law authorizing "preventive detention" of a defendant who can be shown to be dangerous. But that requires special measures, such as bringing the defendant to trial within 60 days of arrest, and prosecutors have been reluctant to use the preventive-detention procedure.

"At any given time," says Bruce Beaudin, director of the D.C. bail agency, "there will be between 2,500 and 3,000 persons out on some form of pretrial release."

Some officials suggest that overcrowding in the D.C. jail influences some judges to grant bail.

Even though the prosecutor decides to pursue a case, there is still a good chance the case eventually will be dropped by him or dismissed by a judge.

Often, key witnesses simply can't be found, usually because they have moved and left no forwarding address or because the address provided by the police is incorrect. Several witnesses gave their address as 1600 Pennsylvania Avenue—the address of the White House—and police dutifully took it down. In some cases of wrong addresses, the officer just made a mistake. In other cases, the witness may be fearful of intimidation or retaliation by the accused and provides a phony address so the defendant can't find him. This is especially true if the witness is asked his address in the presence of the accused. Sometimes, the witness simply does not want to get involved in a trial that could take up much of his time.

The length of time it usually takes to dispose of a criminal case adds to the witness problem. For cases that end in trial, the median time is 181 days—about half a year—from the time of arrest. The longer the delay in a trial, the more likely it is that a witness will move or his memory will fade.

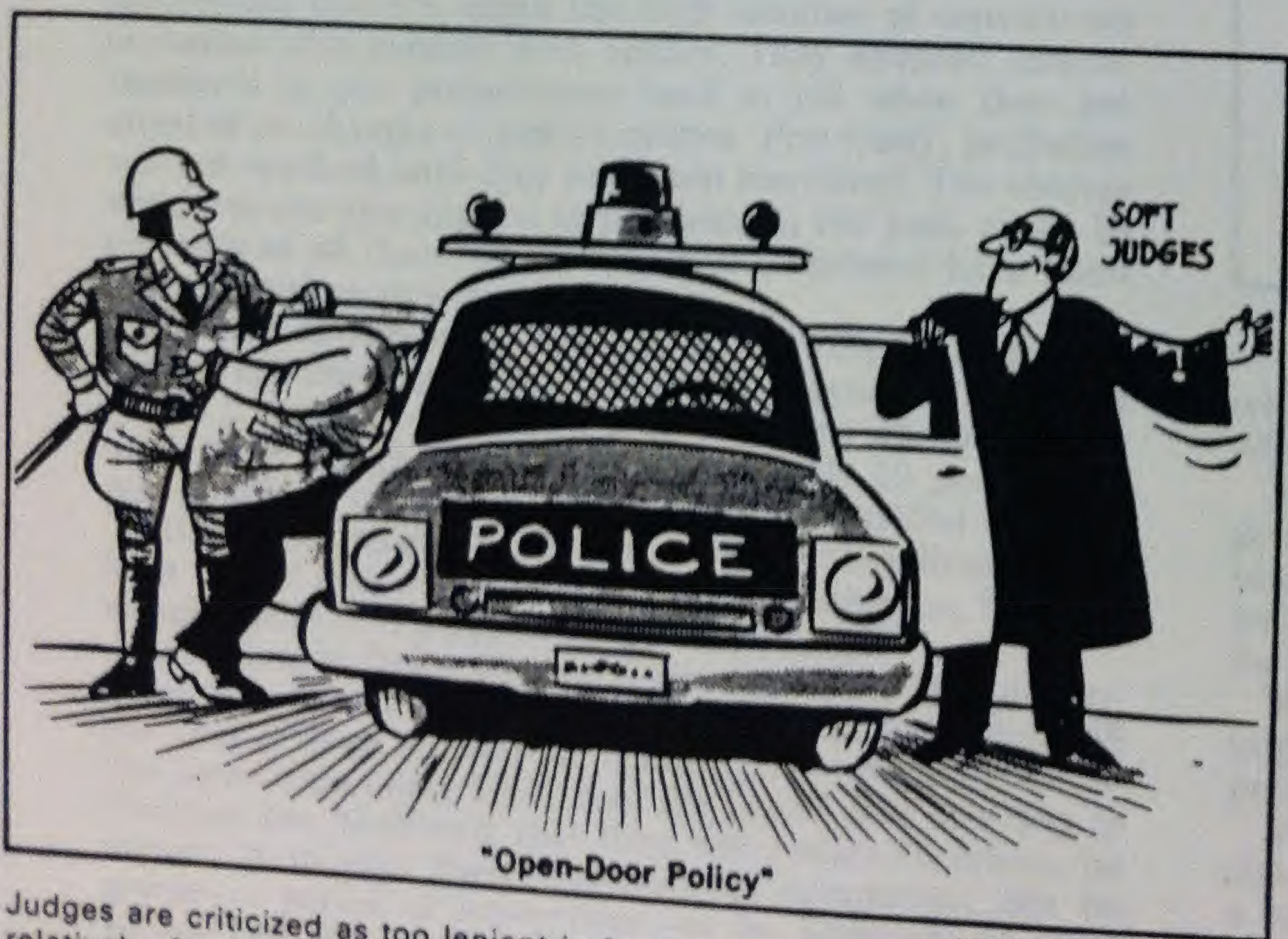
Communications gap. Inadequate communication is found to be a key factor in explaining why many cases have to be dropped. For example, police may tell a witness to go to the "prosecutor's office." But many offices in Washington are referred to by that name. As a result, some witnesses get lost and eventually give up and go home. Other witnesses may testify at a preliminary hearing or before a grand jury, and think they had attended the trial because nobody explained what was going on. So, later, when summoned to testify at the trial, some witnesses ignore the summons.

Frequently, cases are dropped because witnesses are believed to be "unco-operative." Occasionally they are. A girl friend of a man accused of assaulting her, for example, may forgive him and decline to testify against him. But a 1973 survey of 1,000 Washington witnesses revealed that many listed as unco-operative said they had never been asked to testify. Frequently, witnesses are not notified clearly when or where to appear.

This poor handling of witnesses has significant effects because a statistical analysis of Washington's felony cases shows that the number of witnesses is the most important factor in winning a conviction. Having even one witness increases the chance of conviction by 20 per cent.

Crime victims can help convict their robber or attacker. A recent Rand Corporation study of 153 law-enforcement agencies found: "The single most important determinant of whether or not a case will be solved is the information the victim supplies to the immediately responding patrol officer." Witnesses, such as victims, are the key.

Prosecutors play an important role in decid-



Judges are criticized as too lenient in freeing criminals. But a study shows that relatively few criminals come before judges for trial or for sentencing.

BORGSTEDT-COPLEY NEWS SERVICE

ing who goes free by choosing the cases they will or won't prosecute. The *U.S. News & World Report* study shows that prosecutors tend to focus most of their efforts on cases that appear easy to win and to duck the hard ones. The dangerousness of the defendant, as measured by his prior arrests or convictions, is found not to play much of a role in the decision of whether to prosecute. Often the prosecutor is not even aware that the defendant in his case is also facing another charge being handled by a different prosecutor.

"Hard to understand." It's not only in Washington that officials lose track of repeated offenders. In nearby Prince Georges County, Md., a youth compiled a long record of sexually molesting boys, even while on probation for similar offenses. When he came before a court on new charges last year, he again won probation on the recommendation of a prosecutor who did not know his full record. A few months later the youth was charged with killing an 11-year-old boy.

Maryland's Governor Marvin Mandel commented: "It's hard for me to understand how an individual . . . can be charged the number of times he was charged for a similar offense and no one seems to have done anything about it."

Some popular conceptions are contradicted by a close study of the records. It is found, for example, that judges do not set many defendants free because of what critics call "technicalities." Very few cases are dismissed because police seized evidence by illegal methods or failed to give a defendant a warning about his rights to remain silent and to have a lawyer. Since only 1 in 3 of all those arrested is convicted, judges have limited opportunities to be lenient.

D.C.'s record of sending 6 out of 10 convicted felons to jail or prison indicates its judges may be sterner than those in many cities, on the basis of comparative statistics.

Judges say that they usually grant probation because they believe that prison will do a defendant more harm than good or that the person deserves another chance.

"There are so many unquantifiable factors that go into deciding on a sentence," says Chief Judge Harold Greene of Washington's Superior Court. "I personally look to the seriousness of the offense and whether the person has a prior criminal record. I also look at his family record."

Despite recent criticism that rehabilitation programs are ineffective, Judge Greene still regards rehabilitation as a major goal, and "I still consider it when I sentence, although not for hardened, violent recidivists."

Washington judges recently showed their awareness of community concern about the high number of convicts on probation who commit new crimes. They adopted stricter standards to put probationers back in jail when they are arrested on charges of violent crimes. Previously, probation was not revoked until they had been convicted. The stricter standards are also applied to parolees. In the past, about 16 per cent of all those paroled from D.C. prisons have been recommitted on new convictions.

The Rev. H. Albion Ferrell, chairman of the D.C. board of parole, acknowledges that the board's record of granting parole 2 out of 3 times at a prisoner's first eligibility may seem to be a high figure. But, he says, only 10 per cent of prisoners held in "maximum security" are paroled because: "If they're in maximum security, they're disciplinary problems. And if they can't adjust within an institution, how can we anticipate they'll adjust in the community?"

According to Delbert Jackson, director of the D.C. department of corrections, what critics seem to forget is that "98 per cent of these inmates are coming back into the community some time—only 2 per cent die here." And one way to decrease the likelihood that they will return to crime, he argues, is to ease their transition to community life by parole—a period of supervision—or by furloughs of work release that allow them to build up a skill or a bank account

THREE FACTS ABOUT PEOPLE ARRESTED IN NATION'S CAPITAL

2 OF 3 IN FELONIES GO FREE

A study of 7,057 felony arrests sent to the prosecutor in Washington, D.C., in 1974 showed:

64% of the cases were dismissed or dropped.

26% were solved by pleas of guilty.

10% were tried.

At trial: 7% of those arrested were convicted.

3% of those arrested were acquitted.

Thus: Only 33% of all those arrested were convicted or pleaded guilty, while 67% went free.

CONVICTION RATES VARY WIDELY

The same study found of those arrested for these felonies:

Murder—50% were convicted or pleaded guilty, 50% went free.

Rape—29% were convicted or pleaded guilty, 71% went free.

Robbery and armed robbery—34% were convicted or pleaded guilty, 66% went free.

Burglary—47% were convicted or pleaded guilty, 53% went free.

Aggravated assault—19% were convicted or pleaded guilty, 81% went free.

MANY RELEASED COMMIT CRIMES

Of those arrested for crimes, the following proportions were free on some form of conditional release—bail, probation or parole:

Murder	28%
Rape	19%
Robbery	31%
Burglary	32%
Assault	11%
Total of all felonies	26%

Source: Institute for Law and Social Research

while still in prison so that they won't have to steal to live when they get out.

Surveys of other cities show that the reasons why criminals go free are about the same as in Washington. This finding is based on talks with officials in Los Angeles County, Detroit and Indianapolis and on studies made in Chicago, Sacramento, Milwaukee, New York and Cincinnati.

Where changes can be made. What can be done to improve the system of criminal justice and keep more proven criminals off the streets?

Many officials and experts agree that changes can and should be made. They stress better handling of witnesses and a more intensive focus on "career" criminals who repeat their crimes. Mr. Hamilton of the Washington Institute for Law and Social Research suggests that the prosecutors set up

WHY CRIMINALS GO FREE

[continued from preceding page]

a system to keep track not only of repeaters but of all accused criminals. In many cities, he says, "record keeping is so poor officials literally don't know what they're doing."

Washington's Police Chief Maurice Cullinane suggests more public accountability might improve performance of officials: "If a prosecutor had to stand up publicly each month and say, 'I dismissed 2 out of 3 cases,' how long do you think that kind of thing would go on?"

No matter what is done, officials agree, there is going to be some "slippage" in the criminal-justice system.

"It's unrealistic to think you can convict 100 out of 100 persons police arrest for a crime," says J. Patrick Hickey, Washington's public defender. "Maybe it's even unrealistic to expect you'll get 50 out of 100."

Hans W. Mattick, director of the Center for Research in Criminal Justice in Chicago, says that one reason arrests dwindle to so few convictions is that police resources are

large in comparison with those of prosecutors, courts and prisons. "The criminal-justice system," he says, "can be likened to a vacuum cleaner. The police are the mouth and the suction power. The courts are the hose. And the prisons are the bag. We've increased the size of the mouth and the suction power but not the other things."

Washington's Chief Judge Greene points out that the various agencies of the criminal-justice system have different priorities—some of them conflicting: "Police are mainly interested in arrests. Prosecutors and defense attorneys want to win their cases. Courts are the arbiters. And corrections officials want to rehabilitate criminals and get them back into the community as soon as possible. One might say they all have two common goals—to cut crime and render justice. But there's a tension between the two that explains why some people have to go free."

It is this situation that contributes to the frustrations and anger of law-abiding citizens who find it difficult to understand why the criminal-justice system appears all too often to favor criminals over society at large.

CRIMINALS ON THE LOOSE—SOME GLARING EXAMPLES

From records of the District of Columbia come these examples of how criminals can commit one crime after another, spending little time in prison:

CRIMINAL A. 8 arrests in 8 years, including:

- Feb. 21, 1975 Freed on parole, after serving 5 years for robbery.
- March 9, 1975 Arrested on charge of homicide. Next day also charged with an armed robbery committed 3 days after his release on parole. That charge was later dropped.
- July 10, 1975 Released from jail after posting bond.
- Oct. 4, 1975 Arrested on charge of bank robbery.
- Oct. 24, 1975 Released on \$25,000 bond.
- Oct. 28, 1975 Arrested and charged with assault with intent to kill in shooting of a woman.

CRIMINAL B. 8 arrests in 4 years, including:

- June 24, 1974 Indicted for murder and robbery committed on Jan. 2, 1974, while he was out on release awaiting trial on a previous robbery charge.
- July 2, 1974 Sentenced to 6 years on one count of robbery.
- Sept. 18, 1975 Transferred from reformatory youth center to a halfway house.
- Oct. 12, 1975 Arrested for an armed robbery at a church.
- Oct. 13, 1975 Also charged with rape and two additional counts of robbery.
- Oct. 23, 1975 Rape charge and one robbery charge dropped. Returned to reformatory to await trial on 1 robbery count.

CRIMINAL C. 7 arrests in 5 years, including:

- Feb. 6, 1974 Placed on probation for armed bank robbery.
- June 9, 1975 Arrested for another armed robbery.
- June 18, 1975 Released on \$2,000 bond.
- Dec. 9, 1975 Arrested again for bank robbery.
- Dec. 19, 1975 Bank-robbery charge dismissed, and he was released on previous bond.

CRIMINAL D. 4 arrests in 2 years, including:

- July 11, 1974 Arrested for armed robbery. Released without bond to await trial.
- Nov. 2, 1974 Arrested again for burglary while armed. Again released without bond.
- Nov. 15, 1974 Failed to appear in court, and a bench warrant was issued for his arrest.
- Dec. 4, 1974 Arrested on bench warrant, remanded to jail.
- Dec. 12, 1974 Burglary charge dropped.
- Jan. 20, 1975 Placed on 5 years probation after being found guilty of armed robbery.
- Nov. 8, 1975 Arrested for rape while armed with a knife.
- Nov. 12, 1975 Charged with a robbery that occurred on September 26, while he was on probation.

CRIMINAL E. 10 arrests in 6 years, including:

- Aug. 14, 1975 Convicted of carrying a dangerous weapon while on parole for armed robbery. Put on 5 years probation.
- Dec. 4, 1975 Arrested again, this time for auto theft and violation of parole.
- Dec. 5, 1975 Also charged with a homicide that occurred on November 14, while he was free on parole.

CRIMINAL F. 19 arrests in 12 years, including:

- June 18, 1975 Arrested for burglary. Released on personal recognizance.
- July 1, 1975 Arrested on charge of larceny from U.S. mail. Again released on personal recognizance.
- July 17, 1975 Mail-larceny charge dismissed.
- Sept. 12, 1975 Arrested on one charge of burglary, another charge of attempted burglary. Again released on personal recognizance.
- Sept. 15, 1975 Arrested and charged as a fugitive from the State of Maryland.
- Oct. 9, 1975 Again arrested for attempted burglary. Again released, this time on \$300 bond.
- Dec. 2, 1975 Charges of September 12 were dropped.
- Jan. 6, 1976 Charge of October 9 was dropped.
- Jan. 23, 1976 Pleaded guilty to June 18 burglary charge.

Crime and Punishment: It Seldom Works That Way

To imagine how police, prosecutors and courts cope with crime, picture a leaky funnel. At every level in the process, additional persons accused of crime find an exit from the path to prison, with this result—

500 serious
reported
crimes

400 unsolved
cases

100 persons
arrested
for felony

30
dismissed
or placed on
probation

35
juveniles go
to juvenile
court

65
adults
brought to
prosecutor

25
cases
rejected by
prosecutor

40
cases
accepted for
prosecution

6
dismissed
by judge or
jumped bail

34
adults sent
to trial

2
acquitted

32
convicted
or plead
guilty

12
placed on
probation

5
imprisoned

20
adults
imprisoned

THUS, for every 500 serious crimes, just 20 adults and 5 juveniles, on average, are sent to jail—a ratio of 1 in 20.

USNAWR—Basic data: INSLAW, Inc.

MONDAY, APRIL 25, 1977

Los Angeles

Most Felony Cases Drop

Prosecution Rate of L.A., 4 Other Areas Surveyed

BY RONALD J. OSTROW
Times Staff Writer

More than half of the felony arrests recently made in five jurisdictions across the nation, including Los Angeles, were rejected by prosecutors or dismissed after charges had been filed, newly developed data disclosed.

"Contrary to the public perception that all cases are plea-bargained (settled by a defendant's pleading guilty to a lesser charge than one he might have faced), this shows that most are just dropped without being judged on their merits," Charles R. Work, president of the District of Columbia Bar Assn., said.

The data, collected for the last three months of 1976 and processed by a computer system called Prosecutor's Management Information System (PROMIS), are likely to stimulate a great deal of thought about the criminal justice system.

Data were collected for nine jurisdictions: Cobb County, Ga.; Detroit; the District of Columbia; Indianapolis; Los Angeles; Milwaukee; New Orleans, the state of Rhode Island and Salt Lake City. The jurisdictions participated in the program at their own request.

Because of problems in the collection and assimilation of data, figures are not available for every jurisdiction in every area of the study.

Data from the study disclosed also that:

—Nearly one-fourth of those charged with robbery in Los Angeles—23%—were free on bail, probation or parole from earlier offenses at the time the new charges were filed. By contrast, the figure in New Orleans, which makes heavy use of a habitual-offender statute and assesses high bail, was 7%.

—One fifth of the criminal cases in which trial has been delayed in Los Angeles are pending because the defendant has fled. This compared with a 25% fugitive rate in the District of Columbia, which has one of the nation's most liberal bail policies.

—Average time from arrest to disposition of a criminal case in Los Angeles is 125 days—the second-lowest of the jurisdictions analyzed. In Detroit, the average time was 224 days; in Milwaukee, 229 days, and in New Orleans, 116 days.

—Cases delayed because of actions taken by defense counsel accounted for 49% of total continuances in Los Angeles, more than three times the percentage in four other cities for which figures were available.

Los Angeles Dist. Atty. John Van de Kamp said the county had "far and away the worst" defense-caused continuance record. He praised the PROMIS data for pinpointing the problem, noting that such information would enable him to go to judges and contend that such delays "deny justice in the long run" because witnesses and victims tend to become more reluctant to testify as time

Please Turn to Page 12, Col. 1

PROSECUTIONS

Continued from First Page

passes.

Some PROMIS data support long-held beliefs of prosecutors, such as the apparent correlation between a "soft ball" policy in the District of Columbia and the large number of trials delayed there because defendants have fled.

But other PROMIS information, like the sizable number of cases rejected by prosecutors, provides new insights.

"I see the beginnings of a national discussion" arising from the information, said Work, now in private practice in Washington but formerly the No. 2 man in the Law Enforcement Assistance Administration and a prosecutor in the District of Columbia.

The PROMIS figures show that about 45% of felony arrests made in Los Angeles County during the last three months of 1976 were rejected when screened by prosecutors. An additional 12% were dismissed after charges had been filed.

Van de Kamp said he had questions about the collection of data for the arrest figures. He noted that PROMIS was operating in only about a half of his offices and was scheduled to be fully implemented by July 1. The results do not yet give a total picture, he indicated.

Despite his doubts over the case-rejection and dismissal data, Van de Kamp had high praise for PROMIS and the light he expected it to shed on the criminal justice system.

One of the most sensitive areas the computer-based system will investigate is judges' sentencing practices. "Judges throughout the country have been immune from public scrutiny with respect to their sentencing practices," Van de Kamp told a conference held by his office last week.

An analysis of sentences meted out to convicted robbers in four jurisdictions during the last quarter of 1976 showed that the number who actually went to jail varied from 52% in the District of Columbia to 79% in Detroit, 83% in Indianapolis and 85% in New Orleans. Data initially included for Los Angeles indicated that the percentage of incarcerated robbers here was much lower, but the results were thrown out because of "coding error" in tabulating the information. PROMIS is still planning to analyze sentencing practices here.

William A. Hamilton, president of the Washington-based Institute for Law and Social Research, which developed PROMIS with LEAA grants, cited two reasons for the large number of dismissed arrests reported by the system.

"The chief reason is lawyers' judgments that not enough evidence had been collected by police," Hamilton said. The other factor is "problems in bringing citizen-witnesses in and keeping them willing to testify as the case went on," he said.

Despite the widely held belief that Supreme Court rulings underlie the throwing out of many of the cases, the PROMIS data disclosed that so-called "due process" problems had caused only a small number of prosecutions to be dropped.

In Los Angeles, the number was 12% of felonies dismissed or not prosecuted after charges had been filed. In New Orleans, it was 14%; in Indianapolis, 8%; in the District of Columbia, 1%, and in Detroit, 9%.

The PROMIS data can bruise civic pride. In a breakdown of robbery, burglary and drug felony charges filed in eight jurisdictions, the results showed that burglaries accounted for only 10% of total felony charges filed in Detroit—less than half the rate in most other jurisdictions (in Los Angeles, it was 22%).

"We just don't have as much to burglarize in Detroit," said Dominick Carnovale, chief of the criminal division in the Wayne County prosecutor's office. If the data had included surrounding suburban areas, he added, the percentage would have been higher.

Los Angeles Times

LARGEST CIRCULATION IN THE WEST, 1,020,470 DAILY, 1,299,183 SUNDAY

MONDAY MORNING, MAY 16, 1977

STUDY FINDS 'SUPERCOPS'

Few Officers Make Most of Arrests 'That Stick'

BY RONALD J. OSTROW

Times Staff Writer

WASHINGTON—He's a bulky cop with a Fu Manchu moustache and easy-going ways. He disdains handcuffs because they "make a person uncomfortable."

But when Robert R. Raffety arrests someone, that someone is generally as good as convicted. With nearly seven years on the District of Columbia force, Raffety, 28, is a seasoned officer who knows how to make an arrest that sticks.

"I don't want to lock someone up on a charge that can't be made in court," Raffety said. "If I lock somebody up, they have violated the law."

A new computer study shows that Raffety's attitude and his arrest-conviction skills make him a member of a rare breed among policemen in Washington and other cities—the small percentage of officers who make almost all of the effective arrests, those that lead to convictions.

The study, conducted by the Institute for Law and Social Research, focused on 1974 data in Washington. But the researchers think the results can be applied elsewhere, and a similar inquiry in Indianapolis produced similar results.

The study suggests that too many officers think their job is done when they make an arrest. It says these officers fail to come up with two elements pinpointed by the inquiry as vital to convictions: tangible evidence and witnesses willing to testify.

Interviews with five of the District of Columbia's top arrest-conviction producers for 1974 supported the findings of the computerized study—financed by the Law Enforcement Assistance Administration—and added a few wrinkles to what makes a cop one of the best.

The study found that 368 of the

Washington's 4,505 officers—only 8%—made more than half of all arrests that led to convictions.

To be sure, this figure needs adjustment because only about 60% of the city's policemen are on the street, or had assignments in which an officer might make an arrest in the course of his normal duties. But even adjusting for this factor, the study shows that a small number of policemen make most of the conviction-producing arrests.

And the Washington results are buttressed by an analysis of robbery and homicide cases filed by the Indianapolis police force in 1976. James Kelley, prosecuting attorney for Marion County (Indianapolis) and the official who conducted the study, said: "Slightly more than one-half of the cases were produced by one-fourth of the officers."

Raffety's service on the warrant squad in one of the capital's busiest police districts illustrates the value of tangible or physical evidence.

According to the Washington study, the 1974 conviction rate for homicide, sexual assault and aggravated and simple assault was 30% when tangible evidence was recovered. When it was not, the rate fell to 24%.

As a self-described "bounty hunter," Raffety would seem to have to pick up only individuals who had jumped bail or failed in other ways to meet court orders. But having studied every appeal decision under federal and District of Columbia bail law, Raffety has learned the value of documentary evidence. As a result, he invariably asks a fugitive he places under arrest whether he has "any court papers." The defendant usually volunteers that he does have copies, and Raffety seizes as evidence the papers that demonstrate the person knew he was violating a court-ordered obligation.

"If you've got that slip, you've got a locked case under the Bail Reform Act," Raffety explained.

Robert A. Catlett, a member of the Metropolitan Police Department's sex squad, characterized such techniques of arrest as "the little tricks that work like a charm" for the officer who learns from experience.

Catlett's emphasis on experience ties in with another of the study's major findings: that the conviction rate climbed with the experience of the arresting officer, the most notable difference occurring between officers with one year or of service and those with two to three on the force.

"The length of an officer's service was the single most important factor" related to conviction rate, said Brian Forst, who oversaw the Washington study.

The age and sex of an officer, however, had no apparent effect on conviction rates.

Catlett contends that the more experience an officer has, the more he knows "what they want." The "they" are the prosecutors and the courts.

As a sex squad officer, Catlett, a 10-year veteran, has found that "you have to do a lot of hand-holding" with rape victims. "A lot of times, girls get scared and don't want to testify," he said.

"You have to educate them so they can say things they wouldn't normally say aloud," Catlett said. "You don't want them to be nervous because they might laugh" under questioning on the witness stand. "If they laugh, the jury will think it's a farce."

Such witness preparation normally would fall within the prosecutor's province. But the conviction-minded Catlett said: "If he (the prosecutor) doesn't do it, I do."

Persuading witnesses to come forward is a major problem for police. The study found that the conviction rate for violent offenses, other than robbery, more than doubled when two or more "lay witnesses" were available—39% against 18%.

Lorraine D. Paradise, who has spent part of her six years with the department riding buses in search of pickpockets, recalled a case in which the thief stood above a sitting victim and rifled her purse. "He had a trenchcoat on and reached through his pockets," the officer said. "Everybody in the bus saw it but the victim wouldn't tell us anything. She was too afraid."

Witnesses, even when they refuse to testify, can be crucial in pursuing the lawbreaker. Genevieve Marino, who patrols a high-crime area of Washington aboard a motor scooter, recently lost a youth she was pursuing through alleys.

"A guy sitting on his porch nodded his head toward where he went," she said, and she then ordered the 18-year-old purse-snatching suspect to come out from under a car where he was hiding.

In this instance, the man on the porch was unwilling to testify. But police said they had a good case anyway.

Interviews with the top conviction-producers, dubbed by researcher Forst the "supercops," indicate that some of their success is attributable to their attitude about their job.

James L. Black, a vice detective who has been on the force for eight years, thinks that 9 out of 10 suspects can be persuaded to plead guilty in the precinct station.

After being advised of their constitution rights, 95% of them will talk to you—if you treat them like human beings," Black said. "If you're hard-assed and, say, won't let them drink a Coke while you're doing the paperwork, they're not going to tell you anything."

Black and other policemen interviewed stressed that self-preservation also motivated them to treat suspects as human beings.

Black recalled an incident in which he and two other plainclothes officers pulled their Volkswagen to the curb in a section of Washington where the 1968 riot began.

"I pulled out a wad of cash, my whole paycheck, and three hookers came right over," he said. "They got greedy and we arrested them for soliciting."

In court, the judge asked Black whether he had displayed the bills before or after the women approached, and Black conceded the bills had been pulled out before. The judge dismissed the charges on grounds of entrapment.

To Black, the experience had a value not reflected in computerized studies of successful arrests. "Those three girls trust us," he said. "Now if we're in their neighborhood and getting out butts busted, guess who is going to put money in a phone and call for help?"

THE WALL STREET JOURNAL.

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EASTERN EDITION

FRIDAY, FEBRUARY 16, 1979

(W)

PR/IW/PS-06

Why Many Arrests Fail to Result In a Conviction

By BRIAN E. FORST

The most prominent criminal cases seem usually to end in conviction. Sirhan Sirhan, Charles Manson, James Earl Ray, Spiro Agnew, the Watergate defendants and Patricia Hearst serve as conspicuous examples from recent years. One might reasonably be led to conclude that criminal defendants are typically convicted of their crimes.

The reality is quite different. In virtually every city where arrests for serious crimes have been systematically traced through the court process, most have been found not to end in conviction. In New York, 42% of all felony arrests end in conviction; in Chicago 26%; in Los Angeles, 46%; in Baltimore, 44%; 33% in Washington, D.C.; and so on.

In many of these jurisdictions, the use of a computerized information system, funded in part by the Law Enforcement Assistance Administration, provides an opportunity to find out why arrests for serious crimes so often fail in court. In Washington, for example, the prosecutor drops about half of all arrests, most often because of insufficient evidence or poor witness support. Not given as a reason, but nonetheless clearly a major factor, is the awesome load of cases that come to the large city district attorney: many cases that might be adjudicated in a smaller jurisdiction cannot receive much attention in an office that processes a thousand or more felony arrests each month.

* * *

Another important factor is the police. Over half of all convictions that followed the felony arrests made in the District of Columbia in 1974 are attributable to a small corps of 249 of the 2,418 officers who made arrests—10% of all arresting officers accounted for half of the convictions of felony cases. At the other extreme, 747 of the officers who made arrests—31% of all arresting officers—made not a single arrest that ended in conviction.

Clearly, some officers reveal a special skill in obtaining supportive witnesses, recovering evidence useful to the prosecutor, and in general making arrests with an eye toward conviction. Most officers have no particular incentive for doing so, since police officers are typically not evaluated on the basis of what happens after arrest.

Further analysis of the computer data indicates that many of the arrests dropped by the prosecutor due to inadequate witness support involve defendants who assaulted a spouse or other family member, a lover or a "friend." These arrests are often a necessary police response to end fights that could otherwise lead to serious injury or death. Once passions have subsided, however, there may be little value in prosecuting most of these cases. There is no convincing evidence that such prosecutions deter this kind of crime, even when they end in conviction.

Judges, too, influence arrest outcomes, although not in the manner that appears to be widely believed. Judges actually preside over only the handful of criminal cases that come to trial—2% of all felony arrests in New York, and 10% in Washington.

But judges influence the outcomes of many more cases: 6% of all arrests made in Washington do not end in conviction because the defendant flees after the judge sets bail conditions that make it feasible to abscond; 7% of all arrests are dismissed by the judge without formal adjudication. Dismissal of a case provides signals to the prosecutor regarding judicial standards, and subsequent case dismissals by the prosecutor are likely to be made in recognition of these signals.

In short, the failure of arrests to end in conviction is rarely the product of skillful courtroom histrionics by a brilliant defense counsel, as has been popularly portrayed on television and in the theater. An arrest usually fails at the decision of the prosecutor not to proceed with the case, typically because of insufficient testimony or tangible evidence.

This is not to suggest that we would be better off with more convicts. The U.S. prison population rose from 196,000 inmates in 1972 to 279,000 by 1978, and it seems most unwise to further expand this population, especially in the face of a declining crime rate. One alternative would be to substitute effective community dispute centers for arrest and formal prosecution of cases involving family, neighbors and other nonstrangers. Another would be to offset increased convictions with reduced prison terms, especially for older, less active offenders who tend to receive longer terms because their criminal records have had time to grow long.

* * *

One area in which the potential for improvement is particularly great is law enforcement. The system seems to reward officers for making lots of arrests without regard to the quality of those arrests. Specific techniques used by the few "super cops" who consistently bring convictable arrests to the prosecutor could be described to other officers, but serious attempts to first find out what these techniques are have only recently been initiated. It is time to learn how these police officers manage to bring more cooperative witnesses to court, what kinds of evidence are most useful in each crime situation and how these officers obtain each kind, and how incentives to improve the quality of arrests can be instituted generally without encouraging fabrication of evidence.

Reducing the enormous flow of arrests that drop out of the court is, by any reasonable standard, a worthy objective for the criminal justice system. It has been well established that the certainty of punishment is key to the control of crime, and this enormous flow of unresolved arrests supports neither the goal of crime control nor of justice.

Mr. Forst is director of research, Institute for Law and Social Research, Washington.

THE WASHINGTON POST

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Monday, April 23, 1979

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Crime Study Zeroes in on Repeaters

By Thomas Morgan

Washington Post Staff Writer

Persons who have been arrested for burglary, robbery and larceny have about a 60 percent chance of again being arrested for crimes, according to a study released today. The study was financed by the Law Enforcement Assistance Administration.

One of 17 in a \$1.5 million four year project conducted by the Institute for Law and Social Research, the study was designed to help law enforcement officials predict factors that lead to repeat offenses, so that habitual offenders can be identified for career criminal programs.

"Everybody is trying to reduce crime through . . . keeping the repeat offenders off the streets," said William Hamilton, president of the institute.

"What this study shows is that if the career criminal programs are to be effective, there has to be a research base on how to target for the recidivist group," Hamilton said. "The study shows there are some clues you can use to identify such defendants, including how recent their crimes are, the number of crimes, the use of hard drugs and the age of the defendants.

Data for the research came from a study of 4,703 adults arrested for serious misdemeanors or felonies in the District of Columbia from Jan. 1, 1971, to Aug. 31, 1975. During that time, adults accounted for 11,052 arrests.

The study showed:

- A small proportion of the defendants accounted for a large share of arrests. About 30 percent of the defendants were arrested two or more times and accounted for 56 percent of the total arrests. Almost one-fourth of the 11,052 arrests involved only 7 percent of the defendants in the study group.

- Youthful offenders should be the target of efforts to prevent recidivism. Two-thirds of those arrested again were under 30 years old and 31 percent of repeaters were between the ages of 20 to 24. Researchers said law enforcement officials should have access to juvenile records to help identify repeaters and place them in programs at an earlier age. Currently, juvenile records of offenders are not available to police once the person reaches 18 and is considered an adult. At that time, they begin a new criminal record.

- An employed defendant was less likely to be arrested again. "Perhaps a lack of a job leads to more crime to support oneself, or perhaps lack of a job 'indicates a tendency to adopt an illegal life style,' the study said.

- Drug use also was consistently a reliable indication with repeaters. Defendants who used opiates, including heroin, were more likely to commit more crimes than those arrested for possession of marijuana.

- Among those who did become habitual offenders, the study found a tendency to switch crimes, alternating between felonies and misdemeanors. "This suggests that career criminal programs that target only persons arrested for a felony may be missing many serious repeat offenders," the study said. The study gave no support for the concept of a professional robber or burglar.